

Irrigation and Other  
Contract No. 14-06-200-1911D

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES  
AND  
LEWIS CREEK WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 LEWIS CREEK WATER DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 29<sup>th</sup> day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70  
15 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100  
16 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title  
17 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin  
18 River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter  
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States and LEWIS CREEK WATER DISTRICT, hereinafter  
21 referred to as the Contractor, a public agency of the State of California, duly organized, existing,  
22 and acting pursuant to the laws thereof, with its principal place of business in California;

23 WITNESSETH, That

EXPLANATORY RECITALS

24  
25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
27 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
28 restoration, generation and distribution of electric energy, salinity control, navigation and other  
29 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
30 the San Joaquin River and their tributaries; and

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
32 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
33 Division Facilities, which will be used in part for the furnishing of water to the Contractor  
34 pursuant to the terms of this Contract; and

35 [3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number  
36 14-06-200-1911A, as amended, which established terms for the delivery to the Contractor of  
37 Project Water from the Friant Division from February 19, 1965 through February 28, 1995; and

38 [4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection  
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
40 interim renewal contracts, identified as Contract Numbers 14-06-200-1911A-IR1, IR2, IR3, and  
41 IR4, which provided for the continued water service to Contractor from March 1, 1995 through  
42 February 28, 2006, and subsequently entered into a long-term renewal contract identified as  
43 Contract Number 14-06-200-1911A-LTR1, which provided for continued water service to

44 Contractor through February 28, 2026, which was amended January 18, 2007, and is herein  
45 referred to as the “Existing Contract”; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
48 including without limitation the permits issued as the result of Decision 935 by the California  
49 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
50 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
51 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
52 for the benefit of Project Contractors in the Friant Division and for other specified Project  
53 purposes; and

54 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
55 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
56 Recital of this Contract; and

57 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
58 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
59 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
60 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
61 Settlement was subsequently confirmed and implemented through the SJRRSA; and

62 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
63 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
64 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the

65 accelerated repayment of the Contractor's allocated share of construction costs, either as a lump  
66 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
67 will in turn be made available for implementation of the Settlement and SJRRSA, and which  
68 costs otherwise would have been payable through annual water rates, with full repayment by  
69 2030; and

70 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
71 implementation of actions required under the Settlement and the SJRRSA and provide the  
72 Contractor the benefits provided in Section 10010 of the SJRRSA; and

73 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
74 directs the Secretary to provide that the other party to any contract entered into pursuant to  
75 subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
76 subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall "have the  
77 first right (to which the rights of the holders of any other type of irrigation water contract shall be  
78 subordinate) to a stated share or quantity of the project's available water supply for beneficial  
79 use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
80 to such share or quantity upon completion of payment of the amount assigned for ultimate  
81 return" by the contractor subject to fulfillment of all obligations under the contract; and

82 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
83 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

84 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
85 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

86 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
87 such that the Contractor has the capability and expects to utilize fully for reasonable and  
88 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
89 and

90 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
91 by urban and agricultural areas within California for more than fifty (50) years and is considered  
92 by the Contractor as an essential portion of its water supply; and

93 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
94 including the Contractor's, depend upon the continued availability of water, including water  
95 service from the Central Valley Project; and

96 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
97 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
98 Project for all Project purposes; and

99 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
100 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
101 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
102 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
103 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
104 obligations of the United States relative to the Central Valley Project; and

105 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
106 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to

107 meet flood control criteria (currently referred to as “uncontrolled season”), taking into  
108 consideration, among other things, anticipated upstream reservoir operations and the most  
109 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
110 Division Project Contractors utilize a portion of their undependable Class 2 Water in their  
111 service areas to, among other things, assist in the management and alleviation of groundwater  
112 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
113 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
114 optimal water management, and maximize the reasonable and beneficial use of the water; and

115 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
116 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
117 activities set out in the Explanatory Recital immediately above; and

118 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
119 of its obligations under the Existing Contract.

120 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
121 contained, it is hereby mutually agreed by the parties hereto as follows:

122 DEFINITIONS

123 1. When used herein, unless otherwise distinctly expressed or manifestly  
124 incompatible with the intent of the parties as expressed in this Contract, the term:

125 (a) “Additional Capital Obligation” shall mean any additional construction  
126 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
127 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any

128 amounts payable by Contractor as determined through the final adjustment described and  
129 required by Section 10010(b) of the SJRRSA;

130 (b) "Calendar Year" shall mean the period January 1 through December 31,  
131 both dates inclusive;

132 (c) "Charges" shall mean the payments required by Federal Reclamation law  
133 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
134 annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;

135 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
136 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
137 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
138 Friant-Kern and Madera Canals as a dependable water supply during each Year;

139 (e) "Class 2 Water" shall mean that supply of water which can be made  
140 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
141 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
142 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
143 such water will be undependable in character and will be furnished only if, as, and when it can be  
144 made available as determined by the Contracting Officer;

145 (f) "Condition of Shortage" shall mean a condition respecting the Project  
146 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
147 Contract Total;

148                   (g)     “Contracting Officer” shall mean the Secretary of the Interior’s duly  
149 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
150 or regulation;

151                   (h)     “Contract Total” shall mean the maximum amount of Class 1 Water plus  
152 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
153 and is the stated share or quantity of the Project’s available water supply to which the Contractor  
154 will have a permanent right in accordance with the 1956 Act and the terms of this Contract, upon  
155 the Contractor’s complete payment of the Repayment Obligation, notwithstanding any  
156 Additional Capital Obligation that may later be established, which right shall not be disturbed so  
157 long as the Contractor fulfills all of its obligations under this Contract;

158                   (i)     “Contractor’s Service Area” shall mean the area to which the Contractor is  
159 permitted to provide Project Water under this Contract as described in Exhibit “A” attached  
160 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
161 without amendment of this Contract;

162                   (j)     “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
163 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

164                   (k)     “Eligible Lands” shall mean all lands to which Irrigation Water may be  
165 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982  
166 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

167 (l) "Excess Lands" shall mean all lands in excess of the limitations contained  
168 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
169 Reclamation law;

170 (m) "Existing Capital Obligation" shall mean the remaining amount of  
171 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
172 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
173 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
174 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
175 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",  
176 incorporated herein by reference;

177 (n) "Financing Costs", for purposes of computing the reduction of certain  
178 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
179 between the net present value of the Existing Capital Obligation discounted using the full  
180 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
181 set forth in Section 10010(d)(3) of the SJRRRA;

182 (o) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)  
183 or 202(3) of the RRA, whichever is applicable;

184 (p) "Ineligible Lands" shall mean all lands to which Irrigation Water may not  
185 be delivered in accordance with Section 204 of the RRA;

186 (q) "Irrigation Full Cost Water Rate" shall have the same meaning as "full  
187 cost" as that term is used in Paragraph (3) of Section 202 of the RRA;

188                   (r)     “Irrigation Water” shall mean water made available from the Project that  
189     is used primarily in the production of agricultural crops or livestock, including domestic use  
190     incidental thereto, and watering of livestock. Irrigation water shall not include water used for the  
191     purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept  
192     for personal enjoyment or water delivered to landholdings operated in units of less than five (5)  
193     acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use  
194     of the water delivered to any such landholding is a use described in this subdivision of this  
195     Article of this Contract;

196                   (s)     “Landholder” shall mean a party that directly or indirectly owns or leases  
197     nonexempt land, as provided in 43 CFR 426.2;

198                   (t)     “Long Term Historic Average” shall mean the average of the final forecast  
199     of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
200     in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

201                   (u)     Omitted;

202                   (v)     “Municipal & Industrial (M&I) Full Cost Water Rate” shall mean the  
203     annual rate, which, as determined by the Contracting Officer, shall amortize the expenditures for  
204     construction allocable to Project M&I facilities in service, including, O&M deficits funded, less  
205     payments, over such periods as may be required under Federal Reclamation law with interest  
206     accruing from the dates such costs were first incurred plus the applicable rate for the O&M of  
207     such Project facilities. Interest rates used in the calculation of the M&I Full Cost Rate shall  
208     comply with the Interest Rate methodology contained in Section 202(3) (B) and (C) of the RRA;

209                   (w)    “Operation and Maintenance” or “O&M” shall mean normal and  
210 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
211 maintenance of Project facilities;

212                   (x)    “Operating Non-Federal Entity” shall mean the Friant Water Authority, or  
213 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
214 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
215 which may have funding obligations with respect thereto;

216                   (y)    “Other Water” shall mean water from the Project other than Irrigation  
217 Water as described in subdivision (r) of this Article of this Contract, which is used for a purpose  
218 that is considered to be an irrigation use pursuant to State law such as the watering of  
219 landscaping or pasture for animals (e.g., horse) which are kept for the personal enjoyment. For  
220 purposes of this Contract, Other Water shall be paid for at Rates and Charges identical to those  
221 established for M&I water pursuant to the then-existing M&I Ratesetting Policy;

222                   (z)    “Project” shall mean the Central Valley Project owned by the United  
223 States and managed by the Department of the Interior, Bureau of Reclamation;

224                   (aa)   “Project Contractors” shall mean all parties who have a long-term water  
225 service contract or repayment contract for Project Water from the Project with the United States  
226 pursuant to Federal Reclamation law;

227                   (bb)   “Project Water” shall mean all water that is developed, diverted, stored, or  
228 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
229 accordance with the terms and conditions of water rights acquired pursuant to California law;

230                   (cc)   “Rates” shall mean the payments for O&M costs as determined annually  
231   by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
232   policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
233   illustrated in Exhibit “B”, attached hereto;

234                   (dd)   “Recovered Water Account” shall mean the program, as defined in the  
235   Settlement, to make water available to all of the Friant Division Project Contractors who provide  
236   water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
237   impact of the interim flows and restoration flows on such contractors;

238                   (ee)   “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7  
239   of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
240   one-half of the Treasury rate and computed consistent with the provisions of Section  
241   10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
242   in approximately equal annual installments by January 31, 2014;

243                   (ff)   “Secretary” shall mean the Secretary of the Interior, a duly appointed  
244   successor, or an authorized representative acting pursuant to any authority of the Secretary and  
245   through any agency of the Department of the Interior;

246                   (gg)   “Settlement” shall mean the Stipulation of Settlement dated September 13,  
247   2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
248   by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
249   Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

250 (hh) "Tiered Pricing Component" shall be the incremental amount to be paid  
251 for each acre-foot of Water Delivered as described in subdivision (l)(1) of Article 7 of this  
252 Contract;

253 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
254 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
255 Officer;

256 (jj) "Water Made Available" shall mean the estimated amount of Project  
257 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
258 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

259 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
260 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
261 may result from the interim flows and restoration flows provided for in the Settlement;

262 (ll) "Water Scheduled" shall mean Project Water made available to the  
263 Contractor for which times and quantities for delivery have been established by the Contractor  
264 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

265 (mm) "Year" shall mean the period from and including March 1 of each  
266 Calendar Year through the last day of February of the following Calendar Year.

267 EFFECTIVE DATE OF CONTRACT

268 2. (a) This Contract shall become effective on the date first hereinabove written  
269 and shall continue so long as the Contractor is making the annual payments required herein and  
270 paying any other amounts owing under this Contract and applicable law, unless it is terminated

271 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
272 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
273 material uncured breach by the Contractor unless it has first provided at least sixty (60) days  
274 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
275 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
276 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
277 Provided further, That this Contract may be terminated at any time by mutual consent of the  
278 parties hereto.

279 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
280 and notwithstanding any Additional Capital Obligation that may later be established, the Tiered  
281 Pricing Component as that term is utilized in this Contract, the acreage limitations, reporting, and  
282 Full Cost pricing provisions of Federal Reclamation law, and subdivisions (k), (l), (o) through  
283 (q), (s), and (v) of Article 1, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article  
284 14, subdivision (a) of Article 18, and Article 25, all of this Contract, shall no longer be  
285 applicable to the Contractor. Upon complete payment of the Repayment Obligation by the  
286 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
287 the terms of this Contract shall be as provided in the restated contract attached hereto as Exhibit  
288 "E", which has been prepared solely as a matter of administrative convenience. Exhibit "E"  
289 makes no substantive revisions other than those required by this subdivision of this Article of  
290 this Contract. Accordingly, upon complete payment of the Repayment Obligation by the

291 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
292 the parties shall refer to Exhibit "E" as their entire agreement under this Contract.

293 (c) This Contract supersedes in its entirety and is intended to replace in full  
294 the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or  
295 unenforceable for any reason other than a material uncured breach of this Contract by the  
296 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

297 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

298 3. (a) During each Year, consistent with all applicable State water rights,  
299 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
300 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
301 available for delivery to the Contractor from the Project 1,450 acre-feet of Class 1 Water for  
302 irrigation purposes. The quantity of Water Delivered to the Contractor in accordance with this  
303 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this  
304 Contract.

305 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
306 and notwithstanding any Additional Capital Obligation that may later be established, the  
307 Contractor shall have a permanent right to the Contract Total in accordance with the 1956 Act  
308 and the terms of this Contract. This right shall not be disturbed so long as the Contractor fulfills  
309 all of its obligations hereunder. The quantity of water made available for delivery in any given  
310 Year shall remain subject to the terms and conditions of subdivision (a) of this Article of this  
311 Contract.

312 (c) The Contractor shall utilize the Project Water in accordance with all  
313 applicable legal requirements.

314 (d) The Contractor shall make reasonable and beneficial use of all Project  
315 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
316 groundwater banking programs, surface water storage programs, and other similar programs  
317 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
318 Contractor's Service Area which are consistent with applicable State law and result in use  
319 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
320 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
321 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
322 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
323 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
324 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
325 groundwater banking programs, surface water storage programs, and other similar programs  
326 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
327 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
328 which approval will be based upon environmental documentation, Project Water rights, and  
329 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
330 policies, or guidelines.

331 (e) The Contractor, through this Contract, shall comply with requirements  
332 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation

333 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
334 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
335 opinions applicable to Project Water delivery under this Contract, that are within the  
336 Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
337 requirements imposed by environmental documentation applicable to the Contractor and within  
338 its legal authority to implement regarding specific activities. Nothing herein shall be construed  
339 to prevent the Contractor from challenging or seeking judicial relief in a court of competent  
340 jurisdiction with respect to any biological opinion or other environmental documentation referred  
341 to in this Article of this Contract.

342 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
343 following the declaration of Water Made Available under Article 4 of this Contract, the  
344 Contracting Officer will make a determination whether Project Water, or other water available to  
345 the Project, can be made available to the Contractor in addition to the Contract Total in this  
346 Article of this Contract during the Year without adversely impacting the Project or other Project  
347 Contractors and consistent with the Secretary's legal obligations. At the request of the  
348 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
349 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
350 Contracting Officer determines that Project Water, or other water available to the Project, can be  
351 made available to the Contractor, the Contracting Officer will announce the availability of such  
352 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
353 thereafter meet with the Contractor and other Project Contractors capable of taking such water to

354 determine the most equitable and efficient allocation of such water. If the Contractor requests  
355 the delivery of any quantity of such water, the Contracting Officer shall make such water  
356 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
357 policies.

358 (g) The Contractor may request permission to reschedule for use during the  
359 subsequent Year some or all of the Water Made Available to the Contractor during the current  
360 Year referred to as "carryover." The Contractor may request permission to use during the  
361 current Year a quantity of Project Water which may be made available by the United States to  
362 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
363 written approval may permit such uses in accordance with applicable statutes, regulations,  
364 guidelines, and policies.

365 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
366 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
367 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this  
368 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
369 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

370 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
371 delivered for purposes other than those described in subdivisions (r) and (y) of Article 1 of this  
372 Contract upon written approval by the Contracting Officer in accordance with the terms and  
373 conditions of such approval.

374 (j) The Contracting Officer shall make reasonable efforts to protect the water  
375 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to  
376 provide the water available under this Contract. The Contracting Officer shall not object to  
377 participation by the Contractor, in the capacity and to the extent permitted by law, in  
378 administrative proceedings related to the water rights and other rights described in the fifth (5th)  
379 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
380 right to object to the substance of the Contractor's position in such a proceeding. Provided  
381 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
382 legal right under the terms of this Contract to use Project Water.

383 (k) Project Water furnished to the Contractor during any month designated in  
384 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
385 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
386 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
387 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
388 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
389 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
390 schedule for such month, such additional diversions shall be charged first against the  
391 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
392 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
393 account for such additional diversions, such additional diversions shall be charged against the  
394 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the

395 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
396 are not sufficient to account for such additional diversions, such additional diversions shall be  
397 charged first against the Contractor's available Class 2 Water supply and then against the  
398 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
399 additional diversions of water shall be made in accordance with Article 7 of this Contract.

400 (l) If the Contracting Officer determines there is a Project Water supply  
401 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
402 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
403 water will be made available to the Contractor and others under Section 215 of the Act of  
404 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
405 temporary contract with the United States not to exceed one (1) year for the delivery of such  
406 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
407 water may be identified by the Contractor either (i) as additional water to supplement the supply  
408 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
409 written notification to the Contracting Officer, as water to be credited against the Contractor's  
410 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
411 water determined to be available pursuant to this subsection according to the following priorities:  
412 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
413 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
414 requests from other parties for Section 215 Water for use within the area identified as the Friant

415 Division service area in the environmental assessment developed in connection with the  
416 execution of the Existing Contract.

417 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
418 Contracting Officer in connection with the implementation of this Contract, is intended to  
419 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
420 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

421 (n) The rights of the Contractor under this Contract are subject to the terms of  
422 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
423 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
424 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees  
425 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
426 unless and until required by the terms of said contract, and the United States further agrees that it  
427 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
428 Contractors entitled thereto from water that is available or that may become available to it from  
429 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
430 required to satisfy the obligations of the United States under said Exchange Contract and under  
431 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract 11r-1145,  
432 dated July 27, 1939).

433 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
434 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
435 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or

436 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
437 deliveries caused by said restoration flows or interim flows and water developed through such  
438 activities may be made available (i) to the Contractor without the need of an additional contract,  
439 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
440 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

441 TIME FOR DELIVERY OF WATER

442 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
443 shall announce the Contracting Officer's initial declaration of the Water Made Available. The  
444 declaration will be updated monthly and more frequently if necessary, based on then-current  
445 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
446 Made Available will be made. The Contracting Officer shall provide forecasts of Project  
447 operations and the basis of the estimate, with relevant supporting information, upon the written  
448 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
449 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.  
450 The declaration of Project operations will be expressed in terms of both Water Made Available  
451 and the Long Term Historic Average.

452 (b) On or before each March 1 and at such other times as necessary, the  
453 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
454 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
455 United States to the Contractor pursuant to this Contract for the Year commencing on such

456 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
457 according to the approved schedule for the Year commencing on such March 1.

458 (c) The Contractor shall not schedule Project Water in excess of the quantity  
459 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
460 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract  
461 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

462 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
463 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
464 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
465 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
466 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
467 That the total amount of water requested in that schedule or revision does not exceed the  
468 quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
469 Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
470 capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
471 with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
472 water during any period as to which the Contractor is notified by the Contracting Officer or  
473 Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
474 will not be in operation because of scheduled O&M.

475 (e) The Contractor may, during the period from and including November 1 of  
476 each Year through and including the last day of February of that Year, request delivery of any

477 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
478 during the following Year. The Contractor may, during the period from and including January 1  
479 of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
480 including the last day of February of that Year, request delivery of any amount of Class 2 Water  
481 estimated by the Contracting Officer to be made available to it during the following Year. Such  
482 water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing  
483 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
484 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
485 for the following Year in accordance with Article 7 of this Contract and shall be made in  
486 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
487 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
488 approved by the Contracting Officer, to the extent such water is available and to the extent such  
489 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
490 Division contractors or the physical maintenance of the Project facilities. The quantities of  
491 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
492 water that the Contracting Officer would otherwise be obligated to make available to the  
493 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
494 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
495 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
496 water is requested or as revised in its first schedule for the following Year submitted in

497 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
498 following Year water supplies as determined by the Contracting Officer.

499 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

500 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
501 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
502 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
503 and the Contractor.

504 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
505 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
506 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
507 established pursuant to subdivision (a) of this Article of this Contract.

508 (c) The Contractor shall not deliver Project Water to land outside the  
509 Contractor's Service Area unless approved in advance by the Contracting Officer. Until  
510 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any  
511 Additional Capital Obligation that may later be established, the Contractor shall deliver Project  
512 Water in accordance with applicable acreage limitations, reporting, and Full Cost pricing  
513 provisions of Federal Reclamation law and any applicable land classification provisions of the  
514 associated regulations.

515 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
516 measured and recorded with equipment furnished, installed, operated, and maintained by the  
517 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the

518 Contracting Officer (hereafter “other appropriate entity”) at the point or points of delivery  
519 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
520 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
521 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
522 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
523 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
524 the responsible Operating Non-Federal Entity prior to making a final determination of the  
525 quantity delivered for that period of time.

526 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
527 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
528 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
529 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
530 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
531 any nature whatsoever for which there is legal responsibility, including property damage,  
532 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
533 disposal, or distribution of such Project Water beyond such delivery points, except for any  
534 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
535 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
536 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
537 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
538 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of

539 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
540 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
541 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
542 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
543 from which the damage claim arose.

544 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

545 6. (a) The Contractor has established a measurement program satisfactory to the  
546 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
547 Service Area is measured at each agricultural turnout; and Other Water delivered by the  
548 Contractor is measured at each service connection. The water measuring devices or water  
549 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.  
550 The Contractor shall be responsible for installing, operating, and maintaining and repairing all  
551 such measuring devices and implementing all such water measuring methods at no cost to the  
552 United States. The Contractor shall use the information obtained from such water measuring  
553 devices or water measuring methods to ensure its proper management of the water and to bill  
554 water users for water delivered by the Contractor. Nothing herein contained, however, shall  
555 preclude the Contractor from establishing and collecting any charges, assessments, or other  
556 revenues authorized by California law.

557 (b) To the extent the information has not otherwise been provided, upon  
558 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
559 report describing the measurement devices or water measuring methods being used or to be used

560 to implement subdivision (a) of this Article of this Contract and identifying the agricultural  
561 turnouts and the Other Water service connections or alternative measurement programs approved  
562 by the Contracting Officer, at which such measurement devices or water measuring methods are  
563 being used, and, if applicable, identifying the locations at which such devices and/or methods are  
564 not yet being used including a time schedule for implementation at such locations. The  
565 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the  
566 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring  
567 methods identified in the Contractor's report and if the Contracting Officer does not respond in  
568 such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that  
569 the measuring devices or methods are inadequate, the parties shall within sixty (60) days  
570 following the Contracting Officer's response, negotiate in good faith the earliest practicable date  
571 by which the Contractor shall modify said measuring devices and/or measuring methods as  
572 required by the Contracting Officer to ensure compliance with subdivision (a) of this Article of  
573 this Contract.

574 (c) All new surface water delivery systems installed within the Contractor's  
575 Service Area after the effective date of this Contract shall also comply with the measurement  
576 provisions described in subdivision (a) of this Article of this Contract.

577 (d) The Contractor shall inform the Contracting Officer and the State of  
578 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
579 within the Contractor's Service Area during the previous Year.

580 (e) The Contractor shall inform the Contracting Officer and the Operating  
581 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
582 of Irrigation and Other Water taken during the preceding month.

583 RATES, METHOD OF PAYMENT FOR WATER,  
584 AND ACCELERATED REPAYMENT OF FACILITIES

585 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
586 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
587 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
588 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
589 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
590 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

591 (1) The Contractor shall pay the United States as provided for in this  
592 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
593 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
594 recover its estimated reimbursable costs included in the O&M component of the Rate and  
595 amounts established to recover other charges and deficits, other than the construction costs. The  
596 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
597 provisions of the SJRRSA.

598 (2) In accordance with the SJRRSA, the Contractor's allocable share  
599 of Project construction costs will be repaid pursuant to the provisions of this Contract.

600 (A) The amount due and payable to the United States, pursuant  
601 to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been

602 computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth,  
603 both as a lump sum payment and as four (4) approximately equal annual installments, which  
604 amounts together with the manner in which such amounts were calculated are set forth in  
605 Exhibits "C-1" and "C-2". The Repayment Obligation is due in lump sum by January 31, 2011  
606 or in approximate equal annual installments no later than January 31, 2014, as provided by the  
607 SJRRSA. The Contractor must provide appropriate notice to the Contracting Officer in writing  
608 not later than thirty (30) days prior to January 31, 2011 if electing to repay the amount due using  
609 the lump sum alternative. If such notice is not provided by such date, the Contractor shall be  
610 deemed to have elected the installment payment alternative, in which case, the first such payment  
611 shall be made no later than May 1, 2011, the second payment shall be made no later than the first  
612 anniversary of the first payment date, the third payment shall be made no later than the second  
613 anniversary of the first payment date, and the final payment shall be made no later than January  
614 31, 2014. If the installment payment option is elected by the Contractor, the Contractor may  
615 pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer  
616 sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the  
617 remaining amount due to reflect the pre-payment using the same methodology as was used to  
618 compute the initial annual installment payment amount, which is illustrated in Exhibit "C-2".  
619 Notwithstanding any Additional Capital Obligation that may later be established, receipt of the  
620 Contractor's payment of the Repayment Obligation by the United States shall fully and  
621 permanently satisfy the Existing Capital Obligation.

622                                   **(B) Project construction costs or other capitalized costs**  
623       **attributable to capital additions to the Project incurred after the effective date of this Contract or**  
624       **that are not reflected in the schedules referenced in Exhibits “C-1” and “C-2” and properly**  
625       **assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except**  
626       **as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue**  
627       **on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the**  
628       **Contractor until such costs are paid. Increases or decreases in Project construction costs or other**  
629       **capitalized costs assigned to the Contractor caused solely by annual adjustment of Project**  
630       **construction costs or other capitalized costs assigned to each Central Valley Project contractor by**  
631       **the Secretary shall not be considered in determining the amounts to be paid pursuant to this**  
632       **subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate**  
633       **repayment agreement shall be established by the Contractor and the Contracting Officer to**  
634       **accomplish repayment of all additional Project construction costs or other capitalized costs**  
635       **assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the**  
636       **following:**

637                                   **(1) If the collective annual Project construction costs or**  
638       **other capitalized costs that are incurred after the effective date of this Contract and properly**  
639       **assignable to the contractors are less than \$5,000,000, then the portion of such costs properly**  
640       **assignable to the Contractor shall be repaid in not more than five (5) years after notification of**  
641       **the allocation. This amount is the result of a collective annual allocation of Project construction**

642 costs to the contractors exercising contract conversions; Provided, That the reference to the  
643 amount of \$5,000,000 shall not be a precedent in any other context.

644 (2) If the collective annual Project construction costs or  
645 other capitalized costs that are incurred after the effective date of this Contract and properly  
646 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly  
647 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
648 This amount is the result of a collective annual allocation of Project construction costs to the  
649 contractors exercising contract conversions; Provided, That the reference to the amount of  
650 \$5,000,000 shall not be a precedent in any other context.

651 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
652 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
653 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
654 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
655 that may have occurred between the determination of Contractor's Existing Capital Obligation  
656 and the final cost allocation. In the event that the final cost allocation, as determined by the  
657 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
658 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
659 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
660 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
661 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually  
662 agreeable provisions regarding the rate of repayment of such amount may be developed by the

663 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
664 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less  
665 than the Existing Capital Obligation and other amounts of Project construction costs or other  
666 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
667 overpayment as an offset against any outstanding or future obligation of the Contractor,  
668 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
669 Section 10010(f) of the SJRRSA.

670 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
671 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
672 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
673 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
674 months to review and comment on such estimates. On or before September 15 of each Calendar  
675 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
676 during the period October 1 of the current Calendar Year, through September 30 of the following  
677 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
678 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
679 by the Contracting Officer and the Contractor.

680 (1) Upon complete payment of the Repayment Obligation by the  
681 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
682 for the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot  
683 basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in

684 Charges to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA;  
685 Provided, That if the Secretary determines such Charges are otherwise needed, an equivalent  
686 reduction will be made to O&M costs consistent with such provisions of the SJRRSA.  
687 Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit "D", the Friant  
688 Surcharge reduction has been calculated based upon the anticipated average annual water  
689 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the  
690 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant  
691 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to  
692 this Contract to which the Friant Surcharge applies (including but not limited to water  
693 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water  
694 Delivered equals 24,650 acre-feet or December 31, 2039, whichever occurs first.

695 (2) Further, to fully offset the Financing Costs, Contractor shall be  
696 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
697 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
698 or future obligations of the Contractor after October 1, 2019 has been computed by the  
699 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

700 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
701 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
702 Project Water for the following Year and the computations and cost allocations upon which those  
703 Rates are based. The Contractor shall be allowed not less than two (2) months to review and  
704 comment on such computations and cost allocations. By December 31 of each Calendar Year,

705 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
706 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".  
707 The O&M component of the Rate may be reduced as provided in the SJRRSA.

708 (e) At the time the Contractor submits the initial schedule for the delivery of  
709 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
710 Contractor shall make an advance payment to the United States equal to the total amount payable  
711 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
712 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
713 calendar months of the Year. Before the end of the first month and before the end of each  
714 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
715 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
716 be delivered pursuant to this Contract during the second month immediately following.  
717 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
718 Water Delivered shall be made before the end of the following month; Provided, That any  
719 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
720 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
721 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
722 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
723 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
724 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
725 to the Contractor unless and until an advance payment at the Rates then in effect for such

726 additional Project Water is made. Final adjustment between the advance payments for the Water  
727 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
728 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
729 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
730 3 of this Contract if such water is not delivered by the last day of February.

731 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
732 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
733 Charges and the appropriate Tiered Pricing Component then in effect, before the end of the  
734 month following the month of delivery; Provided, That the Contractor may be granted an  
735 exception from the Tiered Pricing Component pursuant to subdivision (l)(2) of this Article of this  
736 Contract. The payments shall be consistent with the quantities of Irrigation Water and Other  
737 Water Delivered as shown in the water delivery report for the subject month prepared by the  
738 Contracting Officer. Such water delivery report shall be the basis for payment of Charges and  
739 Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the  
740 Contracting Officer (as applicable) within five (5) days after the end of the month of delivery.  
741 The water delivery report shall be deemed a bill basis for payment of Charges and the applicable  
742 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment  
743 of Charges shall be made through the adjustment of payments due to the United States for  
744 Charges for the next month. Any amount to be paid for past due payment of Charges shall be  
745 computed pursuant to Article 21 of this Contract.

746 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
747 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
748 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
749 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
750 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or Other Water  
751 under subdivision (a) of this Article of this Contract.

752 (h) Payments to be made by the Contractor to the United States under this  
753 Contract may be paid from any revenues available to the Contractor.

754 (i) All revenues received by the United States from the Contractor relating to  
755 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
756 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
757 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
758 consistent with the SJRRSA.

759 (j) The Contracting Officer shall keep its accounts, pertaining to the  
760 administration of the financial terms and conditions of its long-term contracts, in accordance  
761 with applicable Federal standards so as to reflect the application of Project costs and revenues.  
762 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
763 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
764 disposition of all Project and Contractor revenues, and a summary of all water delivery  
765 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
766 to resolve any discrepancies or disputes relating to accountings, reports, or information.

767                   (k)     The parties acknowledge and agree that the efficient administration of this  
768     Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
769     policies, and procedures used for establishing Rates, Charges, Tiered Pricing Components,  
770     and/or for making and allocating payments, other than those set forth in this Article of this  
771     Contract, may be in the mutual best interest of the parties, it is expressly agreed that the parties  
772     may enter into agreements to modify the mechanisms, policies, and procedures for any of those  
773     purposes while this Contract is in effect without amending this Contract.

774                   (l)     (1)     Beginning at such time as the total of the deliveries of Class 1  
775     Water and Class 2 Water in a Year exceed eighty (80) percent of the Contract Total, then before  
776     the end of the month following the month of delivery the Contractor shall make an additional  
777     payment to the United States equal to the applicable Tiered Pricing Component. The Tiered  
778     Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water in excess of  
779     eighty (80) percent of the Contract Total, but less than or equal to ninety (90) percent of the  
780     Contract Total, shall equal the one-half of the difference between the Rate established under  
781     subdivision (a) of this Article of this Contract and the Irrigation Full Cost Water Rate, or M&I  
782     Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of  
783     the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90) percent of the  
784     Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of  
785     this Article of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water  
786     Rate, whichever is applicable.

787                   (2)     Subject to the Contracting Officer's written approval, the  
788 Contractor may request and receive an exemption from such Tiered Pricing Components for  
789 Project Water Delivered to produce a crop which the Contracting Officer determines will provide  
790 significant and quantifiable habitat values for waterfowl in fields where the water is used and the  
791 crops are produced; Provided, That the exemption from the Tiered Pricing Components for  
792 Irrigation Water shall apply only if such habitat values can be assured consistent with the  
793 purposes of CVPIA through binding agreements executed with or approved by the Contracting  
794 Officer prior to use of such water.

795                   (3)     For purposes of determining the applicability of the Tiered Pricing  
796 Components pursuant to this Article of this Contract, Water Delivered shall include Project  
797 Water that the Contractor transfers to others but shall not include Project Water transferred and  
798 delivered to the Contractor.

799                   (m)     Rates under the respective ratesetting policies will be established to  
800 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
801 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
802 interest, where appropriate, except in instances where a minimum Rate is applicable in  
803 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
804 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
805 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
806 impact of the proposed change.

807                   (n)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
808 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
809 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
810 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
811 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

812                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

813                   8.     The Contractor and the Contracting Officer concur that, as of the effective date of  
814 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
815 therefore shall have no further liability.

816                   RECOVERED WATER ACCOUNT

817                   9.     (a)    Notwithstanding any other provisions of this Contract, water delivered to  
818 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
819 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
820 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
821 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
822 Water.

823                   (b)    The manner in which the Recovered Water Account will be administered  
824 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
825 and Paragraph 16 of the Settlement.

826 SALES, TRANSFERS, AND EXCHANGES OF WATER

827 10. (a) The right to receive Project Water provided for in this Contract may be  
828 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
829 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
830 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
831 Water under this Contract may take place without the prior written approval of the Contracting  
832 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No  
833 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,  
834 absent compliance with appropriate environmental documentation including but not limited to  
835 the National Environmental Policy Act and the Endangered Species Act. Such environmental  
836 documentation must include, as appropriate, an analysis of groundwater impacts and economic  
837 and social effects, including environmental justice, of the proposed Project Water sales, transfers  
838 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

839 (b) In order to facilitate efficient water management by means of Project  
840 Water sales, transfers, or exchanges of the type historically carried out among Project  
841 Contractors located within the same geographical area and to allow the Contractor to participate  
842 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
843 necessary environmental documentation including, but not limited to, the National  
844 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
845 transfers, or exchanges among Contractors within the same geographical area and the

846 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
847 comply with applicable law.

848 (c) Project Water sales, transfers, and exchanges analyzed in the  
849 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
850 be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
851 written acknowledgement of the transaction, but shall not require prior written approval by the  
852 Contracting Officer.

853 (d) For Project Water sales, transfers, or exchanges to qualify under  
854 subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
855 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
856 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface  
857 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
858 established cropland, wildlife refuges, groundwater basins or municipal and industrial use;  
859 (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer or willing  
860 exchangers; (iv) convey water through existing facilities with no new construction or  
861 modifications to facilities and be between existing Project Contractors and/or the Contractor and  
862 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,  
863 and local or tribal laws and requirements imposed for protection of the environment and Indian  
864 Trust Assets, as defined under Federal law.

865 (e) The environmental documentation and the Contracting Officer's  
866 compliance determination for transactions described in subdivision (b) of this Article of this

867 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
868 of the then-existing five (5) year period. All subsequent environmental documentation shall  
869 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
870 transferred, or exchanged within the same geographical area.

871 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement  
872 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
873 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
874 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
875 exchanges comply with sub-division (f)(1) and (f)(2) below.

876 (1) Project Water sales, transfers, and exchanges conducted under the  
877 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
878 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
879 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
880 year, provide ninety (90) days written advance notification to the Contracting Officer and  
881 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
882 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
883 such notice publicly available.

884 (2) The Contractor's thirty (30) days or ninety (90) days advance  
885 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
886 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
887 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is

888 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
889 Contracting Officer shall promptly make such notice publicly available.

890 (3) In addition, the Contracting Officer shall, at least annually, make  
891 available publicly a compilation of the number of Project Water sales, transfers, and exchange  
892 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
893 Contract.

894 (4) Project Water sold, transferred, or exchanged under an agreement  
895 that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
896 counted as a replacement or an offset for purposes of determining reductions to Project Water  
897 deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
898 Settlement.

899 (g) Upon complete payment of the Repayment Obligation by the Contractor,  
900 and notwithstanding any Additional Capital Obligation that may later be established, in the case  
901 of a sale or transfer of Irrigation Water to another contractor which is otherwise subject to the  
902 acreage limitations, reporting, and Full Cost pricing provisions of the RRA, such sold or  
903 transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
904 a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
905 RRA provisions, such RRA provisions shall apply to delivery of such water.

906 **APPLICATION OF PAYMENTS AND ADJUSTMENTS**

907 11. (a) The amount of any overpayment by the Contractor of the Contractor's  
908 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current

909 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
910 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
911 of a refund, any amount of such overpayment, at the option of the Contractor, may be credited  
912 against amounts to become due to the United States by the Contractor. With respect to  
913 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
914 anyone having or claiming to have the right to the use of any of the Project Water supply  
915 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
916 days of the Contracting Officer obtaining direction as to how to credit or refund such  
917 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
918 Year in which the overpayment was made.

919 (b) All advances for miscellaneous costs incurred for work requested by the  
920 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
921 when the work has been completed. If the advances exceed the actual costs incurred, the  
922 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
923 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
924 Contract.

925 TEMPORARY REDUCTIONS—RETURN FLOWS

926 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
927 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
928 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United

929 States under existing contracts, or renewals thereof, providing for water deliveries from the  
930 Project.

931 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
932 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
933 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
934 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
935 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
936 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
937 of emergency, in which case no notice need be given; Provided, That the United States shall use  
938 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
939 service after such reduction or discontinuance, and if requested by the Contractor, the United  
940 States will, if possible, deliver the quantity of Project Water which would have been delivered  
941 hereunder in the absence of such discontinuance or reduction.

942 (c) The United States reserves the right to all seepage and return flow water  
943 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
944 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
945 the United States any right as seepage or return flow to water being used pursuant to this  
946 Contract for surface irrigation or underground storage either being put to reasonable and  
947 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
948 those claiming by, through, or under the Contractor. For purposes of this subdivision,

949 groundwater recharge, groundwater banking and all similar groundwater activities will be  
950 deemed to be underground storage.

951 CONSTRAINTS ON THE AVAILABILITY OF WATER

952 13. (a) In its operation of the Project, the Contracting Officer will use all  
953 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
954 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
955 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
956 Contractor of said determination as soon as practicable.

957 (b) If there is a Condition of Shortage because of errors in physical operations  
958 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
959 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
960 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
961 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
962 employees for any damage, direct or indirect, arising therefrom.

963 (c) The United States shall not execute contracts which together with this  
964 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
965 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
966 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
967 contracts shall not prohibit the United States from entering into temporary contracts of one year  
968 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
969 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to

970 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
971 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
972 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
973 the Contracting Officer shall not take such actions until after consultation with the Friant  
974 Division Project Contractors.

975 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
976 this or any other contract heretofore or hereafter entered into any Year unless and until the  
977 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
978 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
979 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
980 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
981 Water among all Contractors entitled to receive such water that will be made available at Friant  
982 Dam in accordance with the following:

983 (1) A determination shall be made of the total quantity of Class 1  
984 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
985 amount so determined being herein referred to as the available supply.

986 (2) The total available Class 1 supply shall be divided by the Class 1  
987 Water contractual commitments, the quotient thus obtained being herein referred to as the  
988 Class 1 apportionment coefficient.

989 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
990 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of

991 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
992 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
993 specified in subdivision (a) of Article 3 of this Contract.

994 (e) If the Contracting Officer determines there is less than the quantity of  
995 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
996 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
997 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of  
998 subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class  
999 1."

1000 (f) In the event that in any Year there is made available to the Contractor, by  
1001 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
1002 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
1003 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
1004 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
1005 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
1006 for said Year in accordance with Article 11 of this Contract.

1007 UNAVOIDABLE GROUNDWATER PERCOLATION

1008 14. To the extent applicable, the Contractor shall not be deemed to have delivered  
1009 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if  
1010 such lands are irrigated with groundwater that reaches the underground strata as an unavoidable  
1011 result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

ACREAGE LIMITATION

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15. (a) Notwithstanding the application of the acreage limitation provisions to activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article 18 of this Contract, upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the provisions of section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this Contract. Upon receiving the complete payment of the Repayment Obligation from the Contractor, Reclamation will conduct a final water district review for the purpose of determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA from the date of the last water district review until the date when payment to Reclamation of the Repayment Obligation is completed.

(b) Project Water to which the Contractor is entitled through a separate contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to lands within the Contractor's Service Area. Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, Project Water Delivered under this Contract may be mixed with Project Water Delivered pursuant to a contract with the United States, other than this Contract, to which acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law apply without causing the application of the acreage limitations, reporting, and the Full Cost pricing

1033 provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract;  
1034 Provided, The terms and conditions in such other contract shall continue to apply, and if such  
1035 terms and conditions so require, the lands to receive Project Water under such other contract  
1036 shall be properly designated by the Contractor and such Project Water is to be delivered in  
1037 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost  
1038 pricing provisions.

1039 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

1040 16. (a) The parties agree that the delivery of irrigation water or use of Federal  
1041 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not  
1042 limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390 aa *et seq.*), as amended and  
1043 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under  
1044 Federal Reclamation law.

1045 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.  
1046 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
1047 the Settlement and the SJRRSA.

1048 PROTECTION OF WATER AND AIR QUALITY

1049 17. (a) Project facilities used to make available and deliver water to the  
1050 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
1051 of the water at the highest level possible as determined by the Contracting Officer: Provided,  
1052 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
1053 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
1054 quality of water delivered to the Contractor.

1055 (b) The Contractor shall comply with all applicable water and air pollution  
1056 laws and regulations of the United States and the State of California; and shall obtain all required  
1057 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
1058 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
1059 State, and local water quality standards applicable to surface and subsurface drainage and/or  
1060 discharges generated through the use of Federal or Contractor facilities or project water provided  
1061 by the Contractor within the Contractor's Project Water Service Area.

1062 (c) This article shall not affect or alter any legal obligations of the Secretary  
1063 to provide drainage or other discharge services.

1064 WATER ACQUIRED BY THE CONTRACTOR  
1065 OTHER THAN FROM THE UNITED STATES

1066 18. (a) Until complete payment of the Repayment Obligation by the Contractor,  
1067 and notwithstanding any Additional Capital Obligation that may later be established, water or  
1068 water rights now owned or hereafter acquired by the Contractor other than from the United  
1069 States and Irrigation Water furnished pursuant to the terms of this Contract may be  
1070 simultaneously transported through the same distribution facilities of the Contractor subject to  
1071 the following: (i) if the facilities utilized for commingling Irrigation Water and non-project  
1072 water were constructed without funds made available pursuant to Federal Reclamation law, the  
1073 acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will  
1074 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility  
1075 of land to receive Irrigation Water must be established through the certification requirements as  
1076 specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water  
1077 requirements of Eligible Lands within the Contractor's Service Area can be established and the  
1078 quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to  
1079 irrigate such Eligible Lands. The Contractor and the Contracting Officer acknowledge that the  
1080 Contractor's distribution system that was constructed with funds made available pursuant to  
1081 Federal Reclamation law was, prior to effective date of this Contract, repaid in full but title to the  
1082 facilities has not been transferred to the Contractor. As such, when such facilities are utilized for  
1083 commingling Irrigation Water and non-project water, the acreage limitation provisions of Federal

1084 Reclamation law will be applicable only to the Landholders of lands which receive Irrigation  
1085 Water.

1086 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
1087 and notwithstanding any Additional Capital Obligation that may later be established, water or  
1088 water rights now owned or hereafter acquired by the Contractor other than from the United  
1089 States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this  
1090 Contract may be simultaneously transported through the same distribution facilities of the  
1091 Contractor without the payment of fees to the United States and without application of Federal  
1092 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water  
1093 Delivered to Contractor pursuant to this Contract.

1094 (c) Water or water rights now owned or hereafter acquired by the Contractor,  
1095 other than from the United States or adverse to the Project or its contractors (i.e., non-project  
1096 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
1097 Division Facilities, subject to the completion of appropriate environmental documentation, with  
1098 the approval of the Contracting Officer and the execution of any contract determined by the  
1099 Contracting Officer to be necessary, consistent with the following provisions:

1100 (1) The Contractor may introduce non-project water into Project  
1101 facilities and deliver said water to lands within the Contractor's Service Area, including  
1102 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating  
1103 Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition,

1104 if electrical power is required to pump non-project water, the Contractor shall be responsible for  
1105 obtaining the necessary power and paying the necessary charges therefor.

1106 (2) Delivery of such non-project water in and through Project facilities  
1107 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1108 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1109 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1110 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1111 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1112 or expenses thereby.

1113 (3) Neither the United States nor the Operating Non-Federal Entity  
1114 shall be responsible for control, care or distribution of the non-project water before it is  
1115 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1116 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
1117 their respective officers, agents, and employees, from any claim for damage to persons or  
1118 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1119 water from any source.

1120 (4) Diversion of such non-project water into Project facilities shall be  
1121 consistent with all applicable laws, and if involving groundwater, consistent with any  
1122 groundwater management plan for the area from which it was extracted.

1123 (5) After Project purposes are met, as determined by the Contracting  
1124 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity

1125 of the facilities declared to be available by the Contracting Officer for conveyance and  
1126 transportation of non-project water prior to any such remaining capacity being made available to  
1127 non-project contractors.

1128 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1129 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1130 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1131 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1132 appropriate by the Contracting Officer.

1133 OPINIONS AND DETERMINATIONS

1134 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1135 opinion or determination of either party to this Contract, said terms shall not be construed as  
1136 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1137 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
1138 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1139 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1140 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1141 or alter the standard of judicial review applicable under Federal law to any opinion or  
1142 determination implementing a specific provision of Federal law embodied in statute or  
1143 regulation.

1144 (b) The Contracting Officer shall have the right to make determinations  
1145 necessary to administer this Contract that are consistent with the provisions of this Contract, the

1146 laws of the United States and the State of California, and the rules and regulations promulgated  
1147 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1148 extent reasonably practicable.

1149 COORDINATION AND COOPERATION

1150 20. (a) In order to further their mutual goals and objectives, the Contracting  
1151 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1152 with other affected Project Contractors, in order to improve the operation and management of the  
1153 Project. The communication, coordination, and cooperation regarding operations and  
1154 management shall include, but not limited to, any action which will or may materially affect the  
1155 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1156 financial matters including, but not limited to, budget issues. The communication, coordination,  
1157 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1158 party shall retain exclusive decision making authority for all actions, opinions, and  
1159 determinations to be made by the respective party.

1160 (b) It is the intent of the Secretary to improve water supply reliability. To  
1161 carry out this intent:

1162 (1) The Contracting Officer will, at the request of the Contractor,  
1163 assist in the development of integrated resource management plans for the Contractor. Further,  
1164 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1165 partnerships to improve water supply, water quality, and reliability.

1166 (2) The Secretary will, as appropriate, pursue program and project  
1167 implementation and authorization in coordination with Project Contractors to improve the water  
1168 supply, water quality, and reliability of the Project for all Project purposes.

1169 (3) The Secretary will coordinate with Project Contractors and the  
1170 State of California to seek improved water resource management.

1171 (4) The Secretary will coordinate actions of agencies within the  
1172 Department of the Interior that may impact the availability of water for Project purposes.

1173 (5) The Contracting Officer shall periodically, but not less than  
1174 annually, hold division level meetings to discuss Project operations, division level water  
1175 management activities, and other issues as appropriate.

1176 (c) Without limiting the contractual obligations of the Contracting Officer  
1177 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1178 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1179 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1180 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1181 with applicable laws.

1182 CHARGES FOR DELINQUENT PAYMENTS

1183 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1184 charges on delinquent installments or payments. When a payment is not received by the due  
1185 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1186 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1187 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1188 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1189 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due

1190 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1191 with a delinquent payment.

1192 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1193 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1194 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1195 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1196 determined as of the due date and remain fixed for the duration of the delinquent period.

1197 (c) When a partial payment on a delinquent account is received, the amount  
1198 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1199 accrued interest, and finally to the overdue payment.

1200 EQUAL EMPLOYMENT OPPORTUNITY

1201 22. During the performance of this Contract, the Contractor agrees as follows:

1202 (a) The Contractor will not discriminate against any employee or applicant for  
1203 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1204 will take affirmative action to ensure that applicants are employed, and that employees are  
1205 treated during employment, without regard to their race, color, religion, sex, disability, or  
1206 national origin. Such action shall include, but not be limited to the following: employment,  
1207 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1208 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1209 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1210 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1211 nondiscrimination clause.

1212 (b) The Contractor will, in all solicitations or advertisements for employees  
1213 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1214 consideration for employment without regard to race, color, religion, sex, disability, or national  
1215 origin.

1216 (c) The Contractor will send to each labor union or representative of workers  
1217 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1218 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1219 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1220 1965, and shall post copies of the notice in conspicuous places available to employees and  
1221 applicants for employment.

1222 (d) The Contractor will comply with all provisions of Executive Order No.  
1223 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1224 of Labor.

1225 (e) The Contractor will furnish all information and reports required by  
1226 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1227 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1228 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1229 ascertain compliance with such rules, regulations, and orders.

1230 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1231 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1232 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1233 ineligible for further Government contracts in accordance with procedures authorized in  
1234 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1235 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1236 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1237 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1238 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1239 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1240 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1241 will take such action with respect to any subcontract or purchase order as may be directed by the  
1242 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1243 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1244 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1245 Contractor may request the United States to enter into such litigation to protect the interests of  
1246 the United States.

1247 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1248 23. (a) The obligation of the Contractor to pay the United States as provided in  
1249 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1250 obligation may be distributed among the Contractor's water users and notwithstanding the  
1251 default of individual water users in their obligations to the Contractor.

1252 (b) The payment of charges becoming due hereunder is a condition precedent  
1253 to receiving benefits under this Contract. The United States shall not make water available to the  
1254 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1255 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1256 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1257 advance payment of water rates levied or established by the Contractor.

1258 (c) With respect to subdivision (b) of this Article of this Contract, the  
1259 Contractor shall have no obligation to require advance payment for water rates which it levies.

1260 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1261 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1262 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1263 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1264 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1265 U.S. Department of the Interior and/or Bureau of Reclamation.

1266 (b) These statutes require that no person in the United States shall, on the  
1267 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1268 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1269 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1270 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1271 including permitting officials of the United States to inspect premises, programs, and documents.

1272 (c) The Contractor makes this agreement in consideration of and for the  
1273 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1274 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1275 Reclamation, including installment payments after such date on account of arrangements for  
1276 Federal financial assistance which were approved before such date. The Contractor recognizes  
1277 and agrees that such Federal assistance will be extended in reliance on the representations and  
1278 agreements made in this Article, and that the United States reserves the right to seek judicial  
1279 enforcement thereof.

1280 PRIVACY ACT COMPLIANCE

1281 25. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
1282 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
1283 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
1284 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation  
1285 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1286 (b) With respect to the application and administration of the criminal penalty  
1287 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees  
1288 responsible for maintaining the certification and reporting records referenced in (a) above are  
1289 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1290 (c) The Contracting Officer or a designated representative shall provide the  
1291 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau  
1292 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage  
1293 Limitation—Interior, Reclamation-31) which govern the maintenance, safeguarding, and  
1294 disclosure of information contained in the Landholder's certification and reporting records.

1295 (d) The Contracting Officer shall designate a full-time employee of the  
1296 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions  
1297 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The  
1298 Contractor is authorized to grant requests by individuals for access to their own records.

1299 (e) The Contractor shall forward promptly to the System Manager each  
1300 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed  
1301 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System  
1302 Manager with information and records necessary to prepare an appropriate response to the  
1303 requester. These requirements do not apply to individuals seeking access to their own  
1304 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the  
1305 requester elects to cite the Privacy Act as a basis for the request.

1306 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1307 26. In addition to all other payments to be made by the Contractor pursuant to this  
1308 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1309 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1310 specific items of direct cost incurred by the United States for work requested by the Contractor  
1311 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1312 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1313 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1314 Article of this Contract shall not apply to costs for routine contract administration.

1315 WATER CONSERVATION

1316 27. (a) Prior to the delivery of water provided from or conveyed through  
1317 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor

1318 shall be implementing an effective water conservation and efficiency program based on the  
1319 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1320 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1321 under Federal law. The water conservation and efficiency program shall contain definite water  
1322 conservation objectives, appropriate economically feasible water conservation measures, and  
1323 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1324 Contract shall be contingent upon the Contractor's continued implementation of such water  
1325 conservation program. In the event the Contractor's water conservation plan or any revised  
1326 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1327 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1328 circumstances which the Contracting Officer determines are beyond the control of the  
1329 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1330 diligently works with the Contracting Officer to obtain such determination at the earliest  
1331 practicable date, and thereafter the Contractor immediately begins implementing its water  
1332 conservation and efficiency program in accordance with the time schedules therein.

1333 (b) Omitted.

1334 (c) The Contractor shall submit to the Contracting Officer a report on the  
1335 status of its implementation of the water conservation plan on the reporting dates specified in the  
1336 then-existing conservation and efficiency criteria established under Federal law.

1337 (d) At five (5) -year intervals, the Contractor shall revise its water  
1338 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating

1339 water conservation plans established under Federal law and submit such revised water  
1340 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1341 will then determine if the  
1342 water conservation plan meets Reclamation's then-existing conservation and efficiency criteria  
1343 for evaluating water conservation plans established under Federal law.

1344 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1345 shall be described in the Contractor's water conservation plan.

1346 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1347 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1348 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1349 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1350 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1351 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1352 any water user within the Contractor's Service Area acquires or has available under any other  
1353 contract pursuant to Federal Reclamation law.

1354 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1355 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1356 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1357 Operating Non-Federal Entity by separate agreement between the United States and the  
1358 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1359 rights or obligations of the Contractor or the United States hereunder.

1360                   (b)     The Contracting Officer has previously notified the Contractor in writing  
1361     that the O&M of a portion of the Project facilities which serve the Contractor has been  
1362     transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1363     to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1364     under the terms and conditions of the separate agreement between the United States and the  
1365     Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1366     rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1367     Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1368     of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1369     Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1370     replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1371     Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1372     O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1373     and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1374     or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1375     States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components  
1376     except to the extent the Operating Non-Federal Entity collects payments on behalf of the United  
1377     States in accordance with the separate agreement identified in subdivision (a) of this Article of  
1378     this Contract.

1379                   (c)     For so long as the O&M of any portion of the Project facilities serving the  
1380     Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the

1381 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1382 Contract representing the cost associated with the activity being performed by the Operating  
1383 Non-Federal Entity or its successor.

1384 (d) In the event the O&M of the Project facilities operated and maintained by  
1385 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1386 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1387 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1388 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1389 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1390 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1391 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the  
1392 United States in compliance with Article 7 of this Contract.

1393 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1394 30. The expenditure or advance of any money or the performance of any obligation of  
1395 the United States under this Contract shall be contingent upon appropriation or allotment of  
1396 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1397 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1398 not appropriated or allotted.

1399 BOOKS, RECORDS, AND REPORTS

1400 31. (a) The Contractor shall establish and maintain accounts and other books and  
1401 records pertaining to administration of the terms and conditions of this Contract, including: the  
1402 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1403 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1404 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1405 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1406 Officer may require. Subject to applicable Federal laws and regulations, each party to this

1407 Contract shall have the right during office hours to examine and make copies of the other party's  
1408 books and records relating to matters covered by this Contract.

1409 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1410 Contract, no books, records, or other information shall be requested from the Contractor by the  
1411 Contracting Officer unless such books, records, or information are reasonably related to the  
1412 administration or performance of this Contract. Any such request shall allow the Contractor a  
1413 reasonable period of time within which to provide the requested books, records, or information.

1414 (c) At such time as the Contractor provides information to the Contracting  
1415 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1416 shall be provided to the Operating Non-Federal Entity.

1417 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1418 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1419 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1420 therein shall be valid until approved in writing by the Contracting Officer.

1421 (b) The assignment of any right or interest in this Contract by either party  
1422 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1423 written concurrence of said other party.

1424 (c) The Contracting Officer shall not unreasonably condition or withhold  
1425 approval of any proposed assignment.

1426 SEVERABILITY

1427 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1428 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor

1429 (iii) an association or other form of organization whose primary function is to represent parties to  
1430 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1431 enforceability of a provision included in this Contract and said person, entity, association, or  
1432 organization obtains a final court decision holding that such provision is legally invalid or  
1433 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1434 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1435 such final court decision identify by mutual agreement the provisions in this Contract which  
1436 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1437 revision(s). The time periods specified above may be extended by mutual agreement of the  
1438 parties. Pending the completion of the actions designated above, to the extent it can do so  
1439 without violating any applicable provisions of law, the United States shall continue to make the  
1440 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1441 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1442 final court decision.

1443 RESOLUTION OF DISPUTES

1444 34. Should any dispute arise concerning any provisions of this Contract, or the  
1445 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1446 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1447 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1448 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1449 not be required where a delay in commencing an action would prejudice the interests of the party

1450 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1451 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1452 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1453 Contractor or the United States may have.

1454 OFFICIALS NOT TO BENEFIT

1455 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1456 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1457 manner as other water users or landowners.

1458 CHANGES IN CONTRACTOR'S SERVICE AREA

1459 36. (a) While this Contract is in effect, no change may be made in the  
1460 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1461 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1462 (b) Within thirty (30) days of receipt of a request for such a change, the  
1463 Contracting Officer will notify the Contractor of any additional information required by the  
1464 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1465 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1466 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1467 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1468 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1469 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1470 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1471 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs

1472 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1473 with Article 26 of this Contract.

1474 FEDERAL LAWS

1475 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1476 the validity or application in connection with the performance of the terms and conditions of this  
1477 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1478 the terms and conditions of this Contract unless and until relief from application of such Federal  
1479 law or regulation to the implementing provision of the Contract is granted by a court of  
1480 competent jurisdiction.

1481 EMERGENCY RESERVE FUND

1482 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1483 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1484 Friant Division Facilities is and will continue to be administered under Contract No.  
1485 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1486 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1487 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1488 MEDIUM FOR TRANSMITTING PAYMENT

1489 39. (a) All payments from the Contractor to the United States under this contract  
1490 shall be by the medium requested by the United States on or before the date payment is due. The  
1491 required method of payment may include checks, wire transfers, or other types of payment  
1492 specified by the United States.

1493 (b) Upon execution of the contract, the Contractor shall furnish the  
1494 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose

1495 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1496 out of the Contractor's relationship with the United States.

1497 NOTICES

1498 40. Any notice, demand, or request authorized or required by this Contract shall be  
1499 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1500 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1501 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1502 to the Board of Directors of Lewis Creek Water District, P.O. Box 911, Visalia, California  
1503 93279. The designation of the addressee or the address may be changed by notice given in the  
1504 same manner as provided in this Article of this Contract for other notices.

1505 CONFIRMATION OF CONTRACT

1506 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1507 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1508 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1509 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1510 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1511 valid, and binding on the Contractor.

1512 CONTRACT DRAFTING CONSIDERATIONS

1513 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1514 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1515 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1516 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the  
1517 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and  
1518 no one party shall be considered to have drafted the stated Articles.

1519 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1520 and year first above written.

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By: *John R. Anaya*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

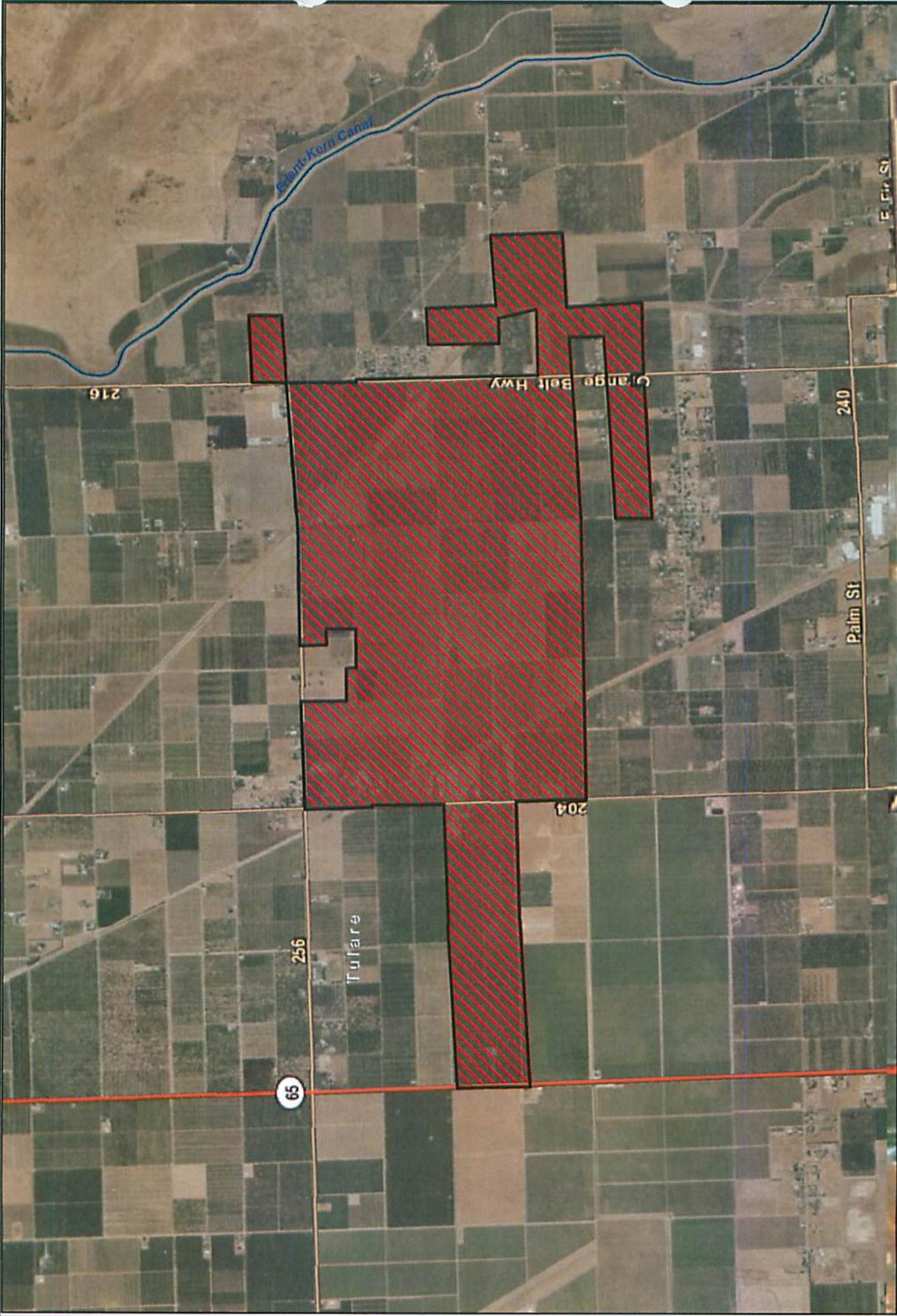
ACTING FOR

LEWIS CREEK WATER DISTRICT

By: *Sam W. Key*  
President, Board of Directors

Attest:

By: *Ed Murray*  
Secretary



**Lewis Creek W.D.**  
 Contract No. 14-06-200-1911D  
 Exhibit A

Friant 9 (d) Repayment

- District Boundary
- Contractor's Service Area (Irrigation Only)
- Contractor's Service Area (Irrigation and M&I)

Date: September 2, 2010  
 File Name: N:\Contract\Friant\_9\Contractor\LewisCreek.mxd



**EXHIBIT B**

**Rates and Charges**

**This is a placeholder page. The Rates and Charges will be transmitted to the Contractor at a later date.**

**Exhibit C-1**  
 Repayment Obligation - Lump Sum Option

**Friant Contractor:**  
**San Joaquin River Restoration Act**

**Lewis Creek WD**

**Existing Capital Obligation (Article 1(m))** \$ **353,862.42**

**Irrigation portion of Existing Capital Obligation** \$ **353,862.42**

**20yr CMT as of :** **10/01/10** **3.400%**

**Discount Rate (1/2 20yr CMT)** **1.700%**

**Discounted Irrigation Capital** \$ **297,861.37**

**Non-Discounted M&I Portion of Existing Capital Obligation**

\$ **-**

**Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))** \$ **297,861.37**

Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
	2011	\$ 353,862
2012	\$ 336,169	\$ 17,693
2013	\$ 318,476	\$ 17,693
2014	\$ 300,783	\$ 17,693
2015	\$ 283,090	\$ 17,693
2016	\$ 265,397	\$ 17,693
2017	\$ 247,704	\$ 17,693
2018	\$ 230,011	\$ 17,693
2019	\$ 212,317	\$ 17,693
2020	\$ 194,624	\$ 17,693
2021	\$ 176,931	\$ 17,693
2022	\$ 159,238	\$ 17,693
2023	\$ 141,545	\$ 17,693
2024	\$ 123,852	\$ 17,693
2025	\$ 106,159	\$ 17,693
2026	\$ 88,466	\$ 17,693
2027	\$ 70,772	\$ 17,693
2028	\$ 53,079	\$ 17,693
2029	\$ 35,386	\$ 17,693
2030	\$ 17,693	\$ 17,693
		<b>\$ 353,862</b>

**Exhibit C-2**  
**Repayment Obligation - Installment Payment Option**

**PRINCIPAL CONTRACTOR:** Lewis Creek WD

**Existing Capital Obligation (Article 1(m))** \$ **353,862.42**

**Irrigation Portion of Existing Capital Obligation** \$ **353,862.42**

**20yr CMT - 10/1/2010** **3.400%**  
**Discount Rate (1/2 20yr CMT)** **1.700%**

**Non-Discounted M&I Existing Capital Obligation** \$ **-**

**Installment Schedule**

	<b>Payment Due Date</b>	<b>Irrigation Portion of Repayment Obligation</b>	<b>Non-discounted M&amp;I Portion of Existing Capital Obligation</b>	<b>Repayment Obligation</b>
<b>1st Installment</b>	5/1/2011	\$ 76,294.81	\$ -	\$ 76,294.81
<b>2nd Installment</b>	5/1/2012	\$ 76,283.28	\$ -	\$ 76,283.28
<b>3rd Installment</b>	5/1/2013	\$ 76,361.61	\$ -	\$ 76,361.61
<b>4th Installment</b>	1/31/2014	\$ 76,500.93	\$ -	\$ 76,500.93
<b>Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A)):</b>		<b>\$ 305,440.63</b>	<b>\$ -</b>	<b>\$ 305,440.63</b>

<b>Year</b>	<b>Irrigation Portion of Allocated Capital Cost</b>		<b>Discounted Capital Amount</b>			
	<b>Beginning Balance</b>	<b>Straight Line Repayment</b>	<b>\$76,294.81</b>	<b>\$76,283.28</b>	<b>\$76,361.61</b>	<b>\$76,500.93</b>
2011	\$ 353,862	\$ 17,693	\$ 17,693			
2012	\$ 336,169	\$ 17,693	\$ 3,716	\$ 13,978		
2013	\$ 318,476	\$ 17,693	\$ 3,716	\$ 4,131	\$ 9,846	
2014	\$ 300,783	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2015	\$ 283,090	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2016	\$ 265,397	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2017	\$ 247,704	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2018	\$ 230,011	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2019	\$ 212,317	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2020	\$ 194,624	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2021	\$ 176,931	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2022	\$ 159,238	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2023	\$ 141,545	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2024	\$ 123,852	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2025	\$ 106,159	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2026	\$ 88,466	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2027	\$ 70,772	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2028	\$ 53,079	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2029	\$ 35,386	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
2030	\$ 17,693	\$ 17,693	\$ 3,716	\$ 4,131	\$ 4,627	\$ 5,219
	<b>\$ 353,862</b>	<b>\$ 88,289</b>	<b>\$ 88,342</b>	<b>\$ 88,501</b>	<b>\$ 88,731</b>	<b>\$ 88,731</b>

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Friant Contractor:**  
**San Joaquin River Restoration Act**

Lewis Creek WD

Average Annual Delivery - Forecasted for 2020-2039*	1,233
<b>Total Projected deliveries (over 20 yr period)**</b>	<b>24,660</b>
Article 7(c)	24,660
20 yr CMT as of 10/1/2010	3.400%
1/2 20 yr CMT as of 10/1/2010	1.700%
<b>Irrigation Portion of Existing Capital Obligation</b>	<b>\$353,862</b>
NPV at Half CMT (Repayment Obligation)	\$297,861
NPV at Full CMT	\$253,752
<b>Financing Cost Offset: (Article 7(c)(1))</b>	<b>\$44,109</b>
NPV of FS Reduction	\$39,265
<b>Difference between Financing Cost Offset and NPV of FS Reduction</b>	<b>\$4,844</b>
<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$6,545</b>

Year	Irrigation portion of Allocated Capital Cost			CVPIA Friant	Reduction in Friant Surcharge			2020 Other Obligation Credit Calculation (Art. 7(c)(2))
	Beginning Balance	Straight Line Repayment	Surcharge per Acre-Foot Before Reduction	Surcharges	Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	
2011	\$ 353,862	\$ 17,693	\$7.00			\$7.00	0	\$ 4,844.03
2012	\$ 336,169	\$ 17,693	\$7.00			\$7.00	0	\$ 5,008.72
2013	\$ 318,476	\$ 17,693	\$7.00			\$7.00	0	\$ 5,179.02
2014	\$ 300,783	\$ 17,693	\$7.00			\$7.00	0	\$ 5,355.11
2015	\$ 283,090	\$ 17,693	\$7.00			\$7.00	0	\$ 5,537.18
2016	\$ 265,397	\$ 17,693	\$7.00			\$7.00	0	\$ 5,725.44
2017	\$ 247,704	\$ 17,693	\$7.00			\$7.00	0	\$ 5,920.11
2018	\$ 230,011	\$ 17,693	\$7.00			\$7.00	0	\$ 6,121.39
2019	\$ 212,317	\$ 17,693	\$7.00			\$7.00	0	\$ 6,329.52
2020	\$ 194,624	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(\$3,699)	\$ 6,544.72
2021	\$ 176,931	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2022	\$ 159,238	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2023	\$ 141,545	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2024	\$ 123,852	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2025	\$ 106,159	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2026	\$ 88,466	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2027	\$ 70,772	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2028	\$ 53,079	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2029	\$ 35,386	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2030	\$ 17,693	\$ 17,693	\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2031			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2032			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2033			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2034			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2035			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2036			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2037			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2038			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
2039			\$7.00		(\$3.00)	\$ 4.00	(3,699)	
	\$ 353,862						(\$73,980)	

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Footnotes**

\* Average annual delivery forecast indicated above is a mutually agreed upon estimate of deliveries during the period 2020-2039 for purposes of calculating the Friant Surcharge reduction and related credits only.

\*\* This figure represents the total cumulative deliveries the reduced surcharge is applicable to, but not beyond 2039. If cumulative actual deliveries exceed this amount prior to 2039, the full Friant Surcharge is applicable to deliveries in excess of this amount.

\*\*\* The difference represents the amount of financing costs that are not offset through the reduced Friant Surcharge computed on this schedule. Pursuant to Section 7(c)(2), this amount shall offset the Contractor's other outstanding or future obligations. After 2020, the contractor's other obligations shall be reduced in the following order to fully offset this amount: 1) Payments or prepayments due for O&M expenses and, to the extent applicable, 2) Additional Capital Obligation.

@ Amount of reduction in Friant Surcharge is computed using FPV of Financing Costs adjusted to Yr 2020. Annual Friant Surcharge reduction to fully offset Financing costs is computed and presented on per a/f basis. Friant surcharge may be reduced up to \$3 per a/f.

Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	61,622
Annual Credit Target	\$	(4,155)
FS Reduction w/o limit	\$	(3.37)
FS Reduction limit	\$	(3.00)

**EXHIBIT E**

**Restated Contract<sup>1</sup>**

Irrigation and Other  
Contract No. 14-06-200-1911D

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

**CONTRACT BETWEEN THE UNITED STATES**  
**AND**  
**LEWIS CREEK WATER DISTRICT**  
**PROVIDING FOR PROJECT WATER SERVICE FROM**  
**FRIANT DIVISION AND**  
**FOR FACILITIES REPAYMENT**

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<sup>1</sup> Pursuant to subdivision (b) of Article 2 of the Contract to which this exhibit is attached, this Exhibit "E" makes no substantive revisions to the Contract to which it is attached and is prepared solely as a matter of administrative convenience. In this Exhibit "E", references to "Contract" or "this Contract" refers to this Restated Contract.

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 LEWIS CREEK WATER DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 29<sup>th</sup> day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70  
15 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100  
16 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title  
17 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin  
18 River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter  
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States and LEWIS CREEK WATER DISTRICT, hereinafter  
21 referred to as the Contractor, a public agency of the State of California, duly organized, existing,  
22 and acting pursuant to the laws thereof, with its principal place of business in California;

23 WITNESSETH, That

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood

27 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
28 restoration, generation and distribution of electric energy, salinity control, navigation and other  
29 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
30 the San Joaquin River and their tributaries; and

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
32 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
33 Division Facilities, which will be used in part for the furnishing of water to the Contractor  
34 pursuant to the terms of this Contract; and

35 [3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number  
36 14-06-200-1911A, as amended, which established terms for the delivery to the Contractor of  
37 Project Water from the Friant Division from February 19, 1965 through February 28, 1995; and

38 [4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection  
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
40 interim renewal contracts, identified as Contract Numbers 14-06-200-1911A-IR1, IR2, IR3, and  
41 IR4, which provided for the continued water service to Contractor from March 1, 1995 through  
42 February 28, 2006, and subsequently entered into a long-term renewal contract identified as  
43 Contract Number 14-06-200-1911A-LTR1, which provided for continued water service to  
44 Contractor through February 28, 2026, which was amended January 18, 2007, and is herein  
45 referred to as the "Existing Contract"; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,

48 including without limitation the permits issued as the result of Decision 935 by the California  
49 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
50 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
51 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
52 for the benefit of Project Contractors in the Friant Division and for other specified Project  
53 purposes; and

54 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
55 Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory  
56 Recital of this Contract; and

57 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
58 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
59 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
60 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
61 Settlement was subsequently confirmed and implemented through the SJRRSA; and

62 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
63 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
64 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the  
65 accelerated repayment of the Contractor’s allocated share of construction costs, either as a lump  
66 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
67 will in turn be made available for implementation of the Settlement and SJRRSA, and which

68 costs otherwise would have been payable through annual water rates, with full repayment by  
69 2030; and

70 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
71 implementation of actions required under the Settlement and the SJRRSA and provide the  
72 Contractor the benefits provided in Section 10010 of the SJRRSA; and

73 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
74 directs the Secretary to provide that the other party to any contract entered into pursuant to  
75 subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
76 subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall “have the  
77 first right (to which the rights of the holders of any other type of irrigation water contract shall be  
78 subordinate) to a stated share or quantity of the project’s available water supply for beneficial  
79 use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
80 to such share or quantity upon completion of payment of the amount assigned for ultimate  
81 return” by the contractor subject to fulfillment of all obligations under the contract; and

82 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
83 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

84 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
85 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
86 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
87 such that the Contractor has the capability and expects to utilize fully for reasonable and

88 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
89 and

90 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
91 by urban and agricultural areas within California for more than fifty (50) years and is considered  
92 by the Contractor as an essential portion of its water supply; and

93 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
94 including the Contractor's, depend upon the continued availability of water, including water  
95 service from the Central Valley Project; and

96 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
97 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
98 Project for all Project purposes; and

99 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
100 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
101 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
102 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
103 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
104 obligations of the United States relative to the Central Valley Project; and

105 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
106 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to  
107 meet flood control criteria (currently referred to as "uncontrolled season"), taking into  
108 consideration, among other things, anticipated upstream reservoir operations and the most

109 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
110 Division Project Contractors utilize a portion of their undependable Class 2 Water in their  
111 service areas to, among other things, assist in the management and alleviation of groundwater  
112 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
113 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
114 optimal water management, and maximize the reasonable and beneficial use of the water; and

115 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
116 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
117 activities set out in the Explanatory Recital immediately above; and

118 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
119 of its obligations under the Existing Contract.

120 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
121 contained, it is hereby mutually agreed by the parties hereto as follows:

122 DEFINITIONS

123 1. When used herein, unless otherwise distinctly expressed or manifestly  
124 incompatible with the intent of the parties as expressed in this Contract, the term:

125 (a) "Additional Capital Obligation" shall mean any additional construction  
126 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
127 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any  
128 amounts payable by Contractor as determined through the final adjustment described and  
129 required by Section 10010(b) of the SJRRSA;

130 (b) "Calendar Year" shall mean the period January 1 through December 31,  
131 both dates inclusive;

132 (c) "Charges" shall mean the payments required by Federal Reclamation law  
133 in addition to the Rates specified in this Contract as determined annually by the Contracting  
134 Officer pursuant to this Contract and consistent with the SJRRSA;

135 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
136 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
137 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
138 Friant-Kern and Madera Canals as a dependable water supply during each Year;

139 (e) "Class 2 Water" shall mean that supply of water which can be made  
140 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
141 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
142 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
143 such water will be undependable in character and will be furnished only if, as, and when it can be  
144 made available as determined by the Contracting Officer;

145 (f) "Condition of Shortage" shall mean a condition respecting the Project  
146 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
147 Contract Total;

148 (g) "Contracting Officer" shall mean the Secretary of the Interior's duly  
149 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
150 or regulation;

151                   (h)     “Contract Total” shall mean the maximum amount of Class 1 Water plus  
152     the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract  
153     and is the stated share or quantity of the Project’s available water supply to which the Contractor  
154     has a permanent right in accordance with the 1956 Act and the terms of this Contract, due to the  
155     Contractor’s complete payment of the Repayment Obligation, notwithstanding any Additional  
156     Capital Obligation that may later be established, which right shall not be disturbed so long as the  
157     Contractor fulfills all of its obligations under this Contract;

158                   (i)     “Contractor’s Service Area” shall mean the area to which the Contractor is  
159     permitted to provide Project Water under this Contract as described in Exhibit “A” attached  
160     hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
161     without amendment of this Contract;

162                   (j)     “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
163     XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

164                   (k)     Omitted;

165                   (l)     Omitted;

166                   (m)     “Existing Capital Obligation” shall mean the remaining amount of  
167     construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
168     Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
169     adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
170     of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a

171 manner consistent with the SJRRSA and such amount is set forth in Exhibits “C-1” and “C-2”,  
172 incorporated herein by reference;

173 (n) “Financing Costs”, for purposes of computing the reduction of certain  
174 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
175 between the net present value of the Existing Capital Obligation discounted using the full  
176 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
177 set forth in Section 10010(d)(3) of the SJRRA;

178 (o) Omitted;

179 (p) Omitted;

180 (q) Omitted;

181 (r) “Irrigation Water” shall mean water made available from the Project that  
182 is used primarily in the production of agricultural crops or livestock, including domestic use  
183 incidental thereto, and watering of livestock. Irrigation water shall not include water used for the  
184 purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept  
185 for personal enjoyment or water delivered to landholdings operated in units of less than five (5)  
186 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use  
187 of the water delivered to any such landholding is a use described in this subdivision of this  
188 Article of this Contract;

189 (s) Omitted;

190 (t) "Long Term Historic Average" shall mean the average of the final forecast  
191 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
192 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

193 (u) Omitted;

194 (v) Omitted;

195 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
196 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
197 maintenance of Project facilities;

198 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
199 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
200 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
201 which may have funding obligations with respect thereto;

202 (y) "Other Water" shall mean water from the Project other than Irrigation  
203 Water as described in subdivision (r) of this Article of this Contract, which is used for a purpose  
204 that is considered to be an irrigation use pursuant to State law such as the watering of  
205 landscaping or pasture for animals (e.g., horse) which are kept for the personal enjoyment. For  
206 purposes of this Contract, Other Water shall be paid for at Rates and Charges identical to those  
207 established for municipal and industrial water pursuant to the then-existing Municipal and  
208 Industrial Ratesetting Policy;

209 (z) "Project" shall mean the Central Valley Project owned by the United  
210 States and managed by the Department of the Interior, Bureau of Reclamation;

211           (aa)    “Project Contractors” shall mean all parties who have a long-term water  
212 service contract or repayment contract for Project Water from the Project with the United States  
213 pursuant to Federal Reclamation law;

214           (bb)    “Project Water” shall mean all water that is developed, diverted, stored, or  
215 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
216 accordance with the terms and conditions of water rights acquired pursuant to California law;

217           (cc)    “Rates” shall mean the payments for O&M costs as determined annually  
218 by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
219 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
220 illustrated in Exhibit “B”, attached hereto;

221           (dd)    “Recovered Water Account” shall mean the program, as defined in the  
222 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
223 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
224 impact of the interim flows and restoration flows on such contractors;

225           (ee)    “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7  
226 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
227 one-half of the Treasury rate and computed consistent with the provisions of Section  
228 10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
229 in approximately equal annual installments by January 31, 2014;

230 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
231 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
232 through any agency of the Department of the Interior;

233 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
234 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
235 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
236 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

237 (hh) Omitted;

238 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
239 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
240 Officer;

241 (jj) "Water Made Available" shall mean the estimated amount of Project  
242 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
243 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

244 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
245 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
246 may result from the interim flows and restoration flows provided for in the Settlement;

247 (ll) "Water Scheduled" shall mean Project Water made available to the  
248 Contractor for which times and quantities for delivery have been established by the Contractor  
249 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

250 (mm) "Year" shall mean the period from and including March 1 of each  
251 Calendar Year through the last day of February of the following Calendar Year.

252 EFFECTIVE DATE OF CONTRACT

253 2. (a) This Contract shall become effective on the date first hereinabove written  
254 and shall continue so long as the Contractor is making the annual payments required herein and  
255 paying any other amounts owing under this Contract and applicable law, unless it is terminated  
256 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
257 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
258 material uncured breach by the Contractor unless it has first provided at least sixty (60) days  
259 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
260 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
261 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
262 Provided further, That this Contract may be terminated at any time by mutual consent of the  
263 parties hereto.

264 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
265 any Additional Capital Obligation that may later be established, the tiered pricing component and  
266 the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law,  
267 shall no longer be applicable to the Contractor.

268 (c) This Contract supersedes in its entirety and is intended to replace in full  
269 the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or

270 unenforceable for any reason other than a material uncured breach of this Contract by the  
271 Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

272 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

273 3. (a) During each Year, consistent with all applicable State water rights,  
274 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
275 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
276 available for delivery to the Contractor from the Project 1,450 acre-feet of Class 1 Water for  
277 irrigation purposes. The quantity of Water Delivered to the Contractor in accordance with this  
278 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this  
279 Contract.

280 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
281 any Additional Capital Obligation that may later be established, the Contractor has a permanent  
282 right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This  
283 right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The  
284 quantity of water made available for delivery in any given Year shall remain subject to the terms  
285 and conditions of subdivision (a) of this Article of this Contract.

286 (c) The Contractor shall utilize the Project Water in accordance with all  
287 applicable legal requirements.

288 (d) The Contractor shall make reasonable and beneficial use of all Project  
289 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
290 groundwater banking programs, surface water storage programs, and other similar programs

291 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
292 Contractor's Service Area which are consistent with applicable State law and result in use  
293 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
294 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
295 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
296 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
297 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
298 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
299 groundwater banking programs, surface water storage programs, and other similar programs  
300 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
301 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
302 which approval will be based upon environmental documentation, Project Water rights, and  
303 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
304 policies, or guidelines.

305 (e) The Contractor, through this Contract, shall comply with requirements  
306 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
307 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
308 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
309 opinions applicable to Project Water delivery under this Contract, that are within the  
310 Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
311 requirements imposed by environmental documentation applicable to the Contractor and within

312 its legal authority to implement regarding specific activities. Nothing herein shall be construed  
313 to prevent the Contractor from challenging or seeking judicial relief in a court of competent  
314 jurisdiction with respect to any biological opinion or other environmental documentation referred  
315 to in this Article of this Contract.

316 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
317 following the declaration of Water Made Available under Article 4 of this Contract, the  
318 Contracting Officer will make a determination whether Project Water, or other water available to  
319 the Project, can be made available to the Contractor in addition to the Contract Total in this  
320 Article of this Contract during the Year without adversely impacting the Project or other Project  
321 Contractors and consistent with the Secretary's legal obligations. At the request of the  
322 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
323 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
324 Contracting Officer determines that Project Water, or other water available to the Project, can be  
325 made available to the Contractor, the Contracting Officer will announce the availability of such  
326 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
327 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
328 determine the most equitable and efficient allocation of such water. If the Contractor requests  
329 the delivery of any quantity of such water, the Contracting Officer shall make such water  
330 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
331 policies.

332 (g) The Contractor may request permission to reschedule for use during the  
333 subsequent Year some or all of the Water Made Available to the Contractor during the current  
334 Year referred to as "carryover." The Contractor may request permission to use during the  
335 current Year a quantity of Project Water which may be made available by the United States to  
336 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
337 written approval may permit such uses in accordance with applicable statutes, regulations,  
338 guidelines, and policies.

339 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
340 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
341 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this  
342 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
343 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

344 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
345 delivered for purposes other than those described in subdivisions (r) and (y) of Article 1 of this  
346 Contract upon written approval by the Contracting Officer in accordance with the terms and  
347 conditions of such approval.

348 (j) The Contracting Officer shall make reasonable efforts to protect the water  
349 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to  
350 provide the water available under this Contract. The Contracting Officer shall not object to  
351 participation by the Contractor, in the capacity and to the extent permitted by law, in  
352 administrative proceedings related to the water rights and other rights described in the fifth (5th)

353 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
354 right to object to the substance of the Contractor's position in such a proceeding. Provided  
355 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
356 legal right under the terms of this Contract to use Project Water.

357 (k) Project Water furnished to the Contractor during any month designated in  
358 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
359 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
360 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
361 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
362 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
363 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
364 schedule for such month, such additional diversions shall be charged first against the  
365 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
366 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
367 account for such additional diversions, such additional diversions shall be charged against the  
368 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
369 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
370 are not sufficient to account for such additional diversions, such additional diversions shall be  
371 charged first against the Contractor's available Class 2 Water supply and then against the  
372 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
373 additional diversions of water shall be made in accordance with Article 7 of this Contract.

374 (l) If the Contracting Officer determines there is a Project Water supply  
375 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
376 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
377 water will be made available to the Contractor and others under Section 215 of the Act of  
378 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
379 temporary contract with the United States not to exceed one (1) year for the delivery of such  
380 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
381 water may be identified by the Contractor either (i) as additional water to supplement the supply  
382 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
383 written notification to the Contracting Officer, as water to be credited against the Contractor's  
384 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
385 water determined to be available pursuant to this subsection according to the following priorities:  
386 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
387 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
388 requests from other parties for Section 215 Water for use within the area identified as the Friant  
389 Division service area in the environmental assessment developed in connection with the  
390 execution of the Existing Contract.

391 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
392 Contracting Officer in connection with the implementation of this Contract, is intended to  
393 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
394 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

395                   (n)     The rights of the Contractor under this Contract are subject to the terms of  
396 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
397 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
398 to as the Exchange Contractors), Contract No. 11r-1144, as amended. The United States agrees  
399 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
400 unless and until required by the terms of said contract, and the United States further agrees that it  
401 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
402 Contractors entitled thereto from water that is available or that may become available to it from  
403 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
404 required to satisfy the obligations of the United States under said Exchange Contract and under  
405 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract 11r-1145,  
406 dated July 27, 1939).

407                   (o)     Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
408 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
409 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
410 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
411 deliveries caused by said restoration flows or interim flows and water developed through such  
412 activities may be made available (i) to the Contractor without the need of an additional contract,  
413 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
414 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

TIME FOR DELIVERY OF WATER

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4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's initial declaration of the Water Made Available. The declaration will be updated monthly and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term Historic Average. The declaration of Project operations will be expressed in terms of both Water Made Available and the Long Term Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

436           (d)     Subject to the conditions set forth in subdivision (a) of Article 3 of this  
437     Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
438     initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
439     written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
440     time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
441     That the total amount of water requested in that schedule or revision does not exceed the  
442     quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
443     Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
444     capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
445     with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
446     water during any period as to which the Contractor is notified by the Contracting Officer or  
447     Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
448     will not be in operation because of scheduled O&M.

449           (e)     The Contractor may, during the period from and including November 1 of  
450     each Year through and including the last day of February of that Year, request delivery of any  
451     amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
452     during the following Year. The Contractor may, during the period from and including January 1  
453     of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
454     including the last day of February of that Year, request delivery of any amount of Class 2 Water  
455     estimated by the Contracting Officer to be made available to it during the following Year. Such  
456     water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing

457 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
458 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
459 for the following Year in accordance with Article 7 of this Contract and shall be made in  
460 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
461 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
462 approved by the Contracting Officer, to the extent such water is available and to the extent such  
463 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
464 Division contractors or the physical maintenance of the Project facilities. The quantities of  
465 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
466 water that the Contracting Officer would otherwise be obligated to make available to the  
467 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
468 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
469 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
470 water is requested or as revised in its first schedule for the following Year submitted in  
471 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
472 following Year water supplies as determined by the Contracting Officer.

473 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

474 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
475 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
476 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
477 and the Contractor.

478                   (b)     The Contracting Officer, the Operating Non-Federal Entity, or other  
479 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
480 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
481 established pursuant to subdivision (a) of this Article of this Contract.

482                   (c)     The Contractor shall not deliver Project Water to land outside the  
483 Contractor's Service Area unless approved in advance by the Contracting Officer. The  
484 Contractor shall deliver Project Water in accordance with applicable Federal Reclamation law.

485  
486                   (d)     All Water Delivered to the Contractor pursuant to this Contract shall be  
487 measured and recorded with equipment furnished, installed, operated, and maintained by the  
488 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
489 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
490 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
491 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
492 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
493 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
494 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
495 the responsible Operating Non-Federal Entity prior to making a final determination of the  
496 quantity delivered for that period of time.

497                   (e)     Neither the Contracting Officer nor any Operating Non-Federal Entity  
498 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project

499 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
500 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
501 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
502 any nature whatsoever for which there is legal responsibility, including property damage,  
503 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
504 disposal, or distribution of such Project Water beyond such delivery points, except for any  
505 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
506 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
507 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
508 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
509 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
510 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
511 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
512 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
513 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
514 from which the damage claim arose.

515 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

516 6. (a) The Contractor has established a measurement program satisfactory to the  
517 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
518 Service Area is measured at each agricultural turnout; and Other Water delivered by the  
519 Contractor is measured at each service connection. The water measuring devices or water

520 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.  
521 The Contractor shall be responsible for installing, operating, and maintaining and repairing all  
522 such measuring devices and implementing all such water measuring methods at no cost to the  
523 United States. The Contractor shall use the information obtained from such water measuring  
524 devices or water measuring methods to ensure its proper management of the water and to bill  
525 water users for water delivered by the Contractor. Nothing herein contained, however, shall  
526 preclude the Contractor from establishing and collecting any charges, assessments, or other  
527 revenues authorized by California law.

528 (b) To the extent the information has not otherwise been provided, upon  
529 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
530 report describing the measurement devices or water measuring methods being used or to be used  
531 to implement subdivision (a) of this Article of this Contract and identifying the agricultural  
532 turnouts and Other Water service connections or alternative measurement programs approved by  
533 the Contracting Officer, at which such measurement devices or water measuring methods are  
534 being used, and, if applicable, identifying the locations at which such devices and/or methods are  
535 not yet being used including a time schedule for implementation at such locations. The  
536 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the  
537 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring  
538 methods identified in the Contractor's report and if the Contracting Officer does not respond in  
539 such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that  
540 the measuring devices or methods are inadequate, the parties shall within sixty (60) days

541 following the Contracting Officer's response, negotiate in good faith the earliest practicable date  
542 by which the Contractor shall modify said measuring devices and/or measuring methods as  
543 required by the Contracting Officer to ensure compliance with subdivision (a) of this Article of  
544 this Contract.

545 (c) All new surface water delivery systems installed within the Contractor's  
546 Service Area after the effective date of this Contract shall also comply with the measurement  
547 provisions described in subdivision (a) of this Article of this Contract.

548 (d) The Contractor shall inform the Contracting Officer and the State of  
549 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
550 within the Contractor's Service Area during the previous Year.

551 (e) The Contractor shall inform the Contracting Officer and the Operating  
552 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
553 of Irrigation and Other Water taken during the preceding month.

554 RATES, METHOD OF PAYMENT FOR WATER,  
555 AND ACCELERATED REPAYMENT OF FACILITIES

556 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
557 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
558 in 1988 and the Secretary's then-existing ratesetting policy for municipal and industrial water,  
559 consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or  
560 superseded only through a public notice and comment procedure; (ii) applicable Federal

561 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
562 provisions of this Contract.

563 (1) The Contractor shall pay the United States as provided for in this  
564 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
565 with policies for Irrigation Water and municipal and industrial water. The Contractor's Rates  
566 shall be established to recover its estimated reimbursable costs included in the O&M component  
567 of the Rate and amounts established to recover other charges and deficits, other than the  
568 construction costs. The Rates for O&M costs and Charges shall be adjusted, as appropriate, in  
569 accordance with the provisions of the SJRRSA.

570 (2) Omitted.

571 (A) Omitted.

572 (B) Project construction costs or other capitalized costs  
573 attributable to capital additions to the Project incurred after the effective date of this Contract or  
574 that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly  
575 assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except  
576 as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue  
577 on the municipal and industrial portion of unpaid Project construction costs or other capitalized  
578 cost assigned to the Contractor until such costs are paid. Increases or decreases in Project  
579 construction costs or other capitalized costs assigned to the Contractor caused solely by annual  
580 adjustment of Project construction costs or other capitalized costs assigned to each Central  
581 Valley Project contractor by the Secretary shall not be considered in determining the amounts to

582 be paid pursuant to this subdivision (a)(2)(B), but will be considered under subdivision (b) of this  
583 Article. A separate repayment agreement shall be established by the Contractor and the  
584 Contracting Officer to accomplish repayment of all additional Project construction costs or other  
585 capitalized costs assigned to the Contractor within the timeframe prescribed by the SJRRSA  
586 subject to the following:

587 (1) If the collective annual Project construction costs or  
588 other capitalized costs that are incurred after the effective date of this Contract and properly  
589 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly  
590 assignable to the Contractor shall be repaid in not more than five (5) years after notification of  
591 the allocation. This amount is the result of a collective annual allocation of Project construction  
592 costs to the contractors exercising contract conversions; Provided, That the reference to the  
593 amount of \$5,000,000 shall not be a precedent in any other context.

594 (2) If the collective annual Project construction costs or  
595 other capitalized costs that are incurred after the effective date of this Contract and properly  
596 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly  
597 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
598 This amount is the result of a collective annual allocation of Project construction costs to the  
599 contractors exercising contract conversions; Provided, That the reference to the amount of  
600 \$5,000,000 shall not be a precedent in any other context.

601 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
602 allocation by the Secretary upon completion of the construction of the Central Valley Project, the

603 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
604 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
605 that may have occurred between the determination of Contractor's Existing Capital Obligation  
606 and the final cost allocation. In the event that the final cost allocation, as determined by the  
607 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
608 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
609 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
610 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
611 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually  
612 agreeable provisions regarding the rate of repayment of such amount may be developed by the  
613 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
614 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less  
615 than the Existing Capital Obligation and other amounts of Project construction costs or other  
616 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
617 overpayment as an offset against any outstanding or future obligation of the Contractor,  
618 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
619 Section 10010(f) of the SJRRSA.

620 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
621 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
622 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
623 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)

624 months to review and comment on such estimates. On or before September 15 of each Calendar  
625 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
626 during the period October 1 of the current Calendar Year, through September 30 of the following  
627 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
628 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
629 by the Contracting Officer and the Contractor.

630 (1) For the years 2020 through 2039 inclusive, Charges shall reflect  
631 the reduction on a per acre-foot basis consistent with Section 10010(d)(1) of the SJRRSA.  
632 Exhibit "D" sets forth the reduction in Charges to offset the Financing Costs as prescribed in  
633 Section 10010(d)(1) of the SJRRSA; Provided, That if the Secretary determines such Charges are  
634 otherwise needed, an equivalent reduction will be made to O&M costs consistent with such  
635 provisions of the SJRRSA. Consistent with Section 10010(d)(1) of the SJRRSA and as shown in  
636 Exhibit "D", the Friant Surcharge reduction has been calculated based upon the anticipated  
637 average annual water deliveries, for the purpose of this reduction only, mutually agreed upon by  
638 the Secretary and the Contractor for the period from January 1, 2020 through December 31,  
639 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to Water  
640 Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not  
641 limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such  
642 volume of Water Delivered equals 24,650 acre-feet or December 31, 2039, whichever occurs  
643 first.

644                   (2) Further, to fully offset the Financing Costs, Contractor shall be  
645 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
646 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
647 or future obligations of the Contractor after October 1, 2019 has been computed by the  
648 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

649                   (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
650 make available to the Contractor an estimate of the Rates for Project Water for the following  
651 Year and the computations and cost allocations upon which those Rates are based. The  
652 Contractor shall be allowed not less than two (2) months to review and comment on such  
653 computations and cost allocations. By December 31 of each Calendar Year, the Contracting  
654 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,  
655 and such notification shall revise Exhibit "B". The O&M component of the Rate may be  
656 reduced as provided in the SJRRSA.

657                   (e) At the time the Contractor submits the initial schedule for the delivery of  
658 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
659 Contractor shall make an advance payment to the United States equal to the total amount payable  
660 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
661 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
662 calendar months of the Year. Before the end of the first month and before the end of each  
663 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
664 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to

665 be delivered pursuant to this Contract during the second month immediately following.  
666 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
667 Water Delivered shall be made before the end of the following month; Provided, That any  
668 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
669 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
670 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
671 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
672 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
673 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
674 to the Contractor unless and until an advance payment at the Rates then in effect for such  
675 additional Project Water is made. Final adjustment between the advance payments for the Water  
676 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
677 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
678 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
679 3 of this Contract if such water is not delivered by the last day of February.

680 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
681 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
682 Charges then in effect, before the end of the month following the month of delivery. The  
683 payments shall be consistent with the quantities of Irrigation Water and Other Water Delivered  
684 as shown in the water delivery report for the subject month prepared by the Contracting Officer.  
685 Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall

686 be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after  
687 the end of the month of delivery. The water delivery report shall be deemed a bill basis for  
688 payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of  
689 Charges shall be made through the adjustment of payments due to the United States for Charges  
690 for the next month. Any amount to be paid for past due payment of Charges shall be computed  
691 pursuant to Article 21 of this Contract.

692 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
693 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
694 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
695 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
696 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or Other Water  
697 under subdivision (a) of this Article of this Contract.

698 (h) Payments to be made by the Contractor to the United States under this  
699 Contract may be paid from any revenues available to the Contractor.

700 (i) All revenues received by the United States from the Contractor relating to  
701 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
702 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
703 regulations, the then-existing Project Ratesetting policies for municipal and industrial water or  
704 Irrigation Water, and consistent with the SJRRSA.

705 (j) The Contracting Officer shall keep its accounts, pertaining to the  
706 administration of the financial terms and conditions of its long-term contracts, in accordance

707 with applicable Federal standards so as to reflect the application of Project costs and revenues.  
708 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
709 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
710 disposition of all Project and Contractor revenues, and a summary of all water delivery  
711 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
712 to resolve any discrepancies or disputes relating to accountings, reports, or information.

713 (k) The parties acknowledge and agree that the efficient administration of this  
714 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
715 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating  
716 payments, other than those set forth in this Article of this Contract, may be in the mutual best  
717 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
718 the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
719 effect without amending this Contract.

720 (l) (1) Omitted.

721 (2) Omitted.

722 (3) Omitted.

723 (m) Rates under the respective ratesetting policies will be established to  
724 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
725 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
726 interest, where appropriate, except in instances where a minimum Rate is applicable in  
727 accordance with the relevant Project ratesetting policy. Changes of significance in practices

728 which implement the Contracting Officer’s ratesetting policies will not be implemented until the  
729 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
730 impact of the proposed change.

731 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
732 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates  
733 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
734 Contracting Officer in the delivery of the transferred Project Water to the transferee’s point of  
735 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

736 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

737 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
738 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
739 therefore shall have no further liability.

740 RECOVERED WATER ACCOUNT

741 9. (a) Notwithstanding any other provisions of this Contract, water delivered to  
742 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
743 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
744 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
745 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
746 Water.

747           (b)     The manner in which the Recovered Water Account will be administered  
748 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
749 and Paragraph 16 of the Settlement.

750                           SALES, TRANSFERS, AND EXCHANGES OF WATER

751           10.     (a)     The right to receive Project Water provided for in this Contract may be  
752 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
753 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
754 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
755 Water under this Contract may take place without the prior written approval of the Contracting  
756 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No  
757 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,  
758 absent compliance with appropriate environmental documentation including but not limited to  
759 the National Environmental Policy Act and the Endangered Species Act. Such environmental  
760 documentation must include, as appropriate, an analysis of groundwater impacts and economic  
761 and social effects, including environmental justice, of the proposed Project Water sales, transfers  
762 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

763           (b)     In order to facilitate efficient water management by means of Project  
764 Water sales, transfers, or exchanges of the type historically carried out among Project  
765 Contractors located within the same geographical area and to allow the Contractor to participate  
766 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
767 necessary environmental documentation including, but not limited to, the National

768 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
769 transfers, or exchanges among Contractors within the same geographical area and the  
770 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
771 comply with applicable law.

772 (c) Project Water sales, transfers, and exchanges analyzed in the  
773 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
774 be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
775 written acknowledgement of the transaction, but shall not require prior written approval by the  
776 Contracting Officer.

777 (d) For Project Water sales, transfers, or exchanges to qualify under  
778 subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
779 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
780 municipal and industrial use, groundwater recharge, groundwater banking, similar groundwater  
781 activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and  
782 be delivered to established cropland, wildlife refuges, groundwater basins or municipal and  
783 industrial use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing  
784 buyer or willing exchangers; (iv) convey water through existing facilities with no new  
785 construction or modifications to facilities and be between existing Project Contractors and/or the  
786 Contractor and the United States, Department of the Interior; and (v) comply with all applicable  
787 Federal, State, and local or tribal laws and requirements imposed for protection of the  
788 environment and Indian Trust Assets, as defined under Federal law.

789                   (e)     The environmental documentation and the Contracting Officer's  
790 compliance determination for transactions described in subdivision (b) of this Article of this  
791 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
792 of the then-existing five (5) year period. All subsequent environmental documentation shall  
793 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
794 transferred, or exchanged within the same geographical area.

795                   (f)     Consistent with Section 10010(e)(1) of the SJRRSA, any agreement  
796 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
797 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy  
798 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
799 exchanges comply with sub-division (f)(1) and (f)(2) below.

800                   (1)     Project Water sales, transfers, and exchanges conducted under the  
801 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
802 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
803 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
804 year, provide ninety (90) days written advance notification to the Contracting Officer and  
805 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
806 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
807 such notice publicly available.

808                   (2)     The Contractor's thirty (30) days or ninety (90) days advance  
809 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain

810 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
811 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
812 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
813 Contracting Officer shall promptly make such notice publicly available.

814 (3) In addition, the Contracting Officer shall, at least annually, make  
815 available publicly a compilation of the number of Project Water sales, transfers, and exchange  
816 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
817 Contract.

818 (4) Project Water sold, transferred, or exchanged under an agreement  
819 that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
820 counted as a replacement or an offset for purposes of determining reductions to Project Water  
821 deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
822 Settlement.

823 (g) Notwithstanding any Additional Capital Obligation that may later be  
824 established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
825 otherwise subject to the acreage limitations, reporting, and Full Cost pricing provisions of the  
826 Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or  
827 transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
828 a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
829 RRA provisions, such RRA provisions shall apply to delivery of such water.

830

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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11. (a) The amount of any overpayment by the Contractor of the Contractor's

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O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current

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liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of

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more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu

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of a refund, any amount of such overpayment, at the option of the Contractor, may be credited

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against amounts to become due to the United States by the Contractor. With respect to

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overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or

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anyone having or claiming to have the right to the use of any of the Project Water supply

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provided for herein. All credits and refunds of overpayments shall be made within thirty (30)

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days of the Contracting Officer obtaining direction as to how to credit or refund such

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overpayment in response to the notice to the Contractor that it has finalized the accounts for the

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Year in which the overpayment was made.

843

(b) All advances for miscellaneous costs incurred for work requested by the

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Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs

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when the work has been completed. If the advances exceed the actual costs incurred, the

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difference will be refunded to the Contractor. If the actual costs exceed the Contractor's

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advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this

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Contract.

**TEMPORARY REDUCTIONS—RETURN FLOWS**

849  
850           12.   (a)    The Contracting Officer shall make all reasonable efforts to optimize  
851 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
852 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
853 States under existing contracts, or renewals thereof, providing for water deliveries from the  
854 Project.

855                   (b)    The Contracting Officer or Operating Non-Federal Entity may temporarily  
856 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
857 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
858 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
859 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the  
860 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
861 of emergency, in which case no notice need be given; Provided, That the United States shall use  
862 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
863 service after such reduction or discontinuance, and if requested by the Contractor, the United  
864 States will, if possible, deliver the quantity of Project Water which would have been delivered  
865 hereunder in the absence of such discontinuance or reduction.

866                   (c)    The United States reserves the right to all seepage and return flow water  
867 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
868 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
869 the United States any right as seepage or return flow to water being used pursuant to this

870 Contract for surface irrigation or underground storage either being put to reasonable and  
871 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
872 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
873 groundwater recharge, groundwater banking and all similar groundwater activities will be  
874 deemed to be underground storage.

875 CONSTRAINTS ON THE AVAILABILITY OF WATER

876 13. (a) In its operation of the Project, the Contracting Officer will use all  
877 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
878 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
879 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
880 Contractor of said determination as soon as practicable.

881 (b) If there is a Condition of Shortage because of errors in physical operations  
882 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
883 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
884 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
885 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
886 employees for any damage, direct or indirect, arising therefrom.

887 (c) The United States shall not execute contracts which together with this  
888 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
889 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
890 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water

891 contracts shall not prohibit the United States from entering into temporary contracts of one year  
892 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
893 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
894 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
895 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
896 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
897 the Contracting Officer shall not take such actions until after consultation with the Friant  
898 Division Project Contractors.

899 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
900 this or any other contract heretofore or hereafter entered into any Year unless and until the  
901 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
902 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
903 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
904 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
905 Water among all Contractors entitled to receive such water that will be made available at Friant  
906 Dam in accordance with the following:

907 (1) A determination shall be made of the total quantity of Class 1  
908 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
909 amount so determined being herein referred to as the available supply.

910                   (2)     The total available Class 1 supply shall be divided by the Class 1  
911     Water contractual commitments, the quotient thus obtained being herein referred to as the  
912     Class 1 apportionment coefficient.

913                   (3)     The total quantity of Class 1 Water under Article 3 of this Contract  
914     shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
915     Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
916     respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
917     specified in subdivision (a) of Article 3 of this Contract.

918                   (e)     If the Contracting Officer determines there is less than the quantity of  
919     Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
920     of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
921     Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of  
922     subdivision (d) of this Article of this Contract substituting the term "Class 2" for the term "Class  
923     1."

924                   (f)     In the event that in any Year there is made available to the Contractor, by  
925     reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
926     of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
927     Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
928     be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
929     already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
930     for said Year in accordance with Article 11 of this Contract.

931 UNAVOIDABLE GROUNDWATER PERCOLATION

932 14. Omitted.

933 ACREAGE LIMITATION

934 15. (a) The Contractor has paid the Repayment Obligation, and notwithstanding  
935 any Additional Capital Obligation that may later be established, the provisions of section 213(a)  
936 and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the effect that  
937 acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply  
938 to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this  
939 Contract. Reclamation will conduct a final water district review for the purpose of determining  
940 compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA  
941 from the date of the last water district review until the date when payment to Reclamation of the  
942 Repayment Obligation was completed.

943 (b) Project Water to which the Contractor is entitled through a separate  
944 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to  
945 lands within the Contractor's Service Area. Notwithstanding any Additional Capital Obligation  
946 that may later be established, Project Water Delivered under this Contract may be mixed with  
947 Project Water Delivered pursuant to a contract with the United States, other than this Contract, to  
948 which acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation  
949 law apply without causing the application of the acreage limitations, reporting, and Full Cost  
950 pricing provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract;  
951 Provided, The terms and conditions in such other contract shall continue to apply, and if such

952 terms and conditions so require, the lands to receive Project Water under such other contract  
953 shall be properly designated by the Contractor and such Project Water is to be delivered in  
954 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost  
955 pricing provisions.

956 COMPLIANCE WITH FEDERAL RECLAMATION LAW

957 16. (a) The parties agree that the delivery of water or the use of Federal facilities  
958 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
959 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
960 Reclamation law.

961 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

962 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
963 the Settlement and the SJRRSA.

964 PROTECTION OF WATER AND AIR QUALITY

965 17. (a) Project facilities used to make available and deliver water to the  
966 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
967 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
968 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
969 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
970 quality of water delivered to the Contractor.

971 (b) The Contractor shall comply with all applicable water and air pollution  
972 laws and regulations of the United States and the State of California; and shall obtain all required  
973 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
974 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
975 State, and local water quality standards applicable to surface and subsurface drainage and/or  
976 discharges generated through the use of Federal or Contractor facilities or project water provided  
977 by the Contractor within the Contractor's Project Water Service Area.

978 (c) This article shall not affect or alter any legal obligations of the Secretary  
979 to provide drainage or other discharge services.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

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18. (a) Omitted.

(b) Notwithstanding any Additional Capital Obligation that may later be established, water or water rights now owned or hereafter acquired by the Contractor other than from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor without the payment of fees to the United States and without application of Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water Delivered to Contractor pursuant to this Contract.

(c) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be stored, conveyed and/or diverted through Project facilities, other than Friant Division Facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-project water into Project facilities and deliver said water to lands within the Contractor's Service Area subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition, if electrical power is required to pump non-project water, the Contractor shall be responsible for obtaining the necessary power and paying the necessary charges therefor.

1002                   (2)     Delivery of such non-project water in and through Project facilities  
1003 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1004 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1005 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1006 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1007 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1008 or expenses thereby.

1009                   (3)     Neither the United States nor the Operating Non-Federal Entity  
1010 shall be responsible for control, care or distribution of the non-project water before it is  
1011 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1012 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
1013 their respective officers, agents, and employees, from any claim for damage to persons or  
1014 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1015 water from any source.

1016                   (4)     Diversion of such non-project water into Project facilities shall be  
1017 consistent with all applicable laws, and if involving groundwater, consistent with any  
1018 groundwater management plan for the area from which it was extracted.

1019                   (5)     After Project purposes are met, as determined by the Contracting  
1020 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1021 of the facilities declared to be available by the Contracting Officer for conveyance and

1022 transportation of non-project water prior to any such remaining capacity being made available to  
1023 non-project contractors.

1024 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1025 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1026 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1027 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1028 appropriate by the Contracting Officer.

1029 OPINIONS AND DETERMINATIONS

1030 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1031 opinion or determination of either party to this Contract, said terms shall not be construed as  
1032 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1033 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
1034 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1035 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1036 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1037 or alter the standard of judicial review applicable under Federal law to any opinion or  
1038 determination implementing a specific provision of Federal law embodied in statute or  
1039 regulation.

1040 (b) The Contracting Officer shall have the right to make determinations  
1041 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
1042 laws of the United States and the State of California, and the rules and regulations promulgated

1043 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1044 extent reasonably practicable.

1045 COORDINATION AND COOPERATION

1046 20. (a) In order to further their mutual goals and objectives, the Contracting  
1047 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1048 with other affected Project Contractors, in order to improve the operation and management of the  
1049 Project. The communication, coordination, and cooperation regarding operations and  
1050 management shall include, but not limited to, any action which will or may materially affect the  
1051 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1052 financial matters including, but not limited to, budget issues. The communication, coordination,  
1053 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1054 party shall retain exclusive decision making authority for all actions, opinions, and  
1055 determinations to be made by the respective party.

1056 (b) It is the intent of the Secretary to improve water supply reliability. To  
1057 carry out this intent:

1058 (1) The Contracting Officer will, at the request of the Contractor,  
1059 assist in the development of integrated resource management plans for the Contractor. Further,  
1060 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1061 partnerships to improve water supply, water quality, and reliability.

1062                   (2)     The Secretary will, as appropriate, pursue program and project  
1063 implementation and authorization in coordination with Project Contractors to improve the water  
1064 supply, water quality, and reliability of the Project for all Project purposes.

1065                   (3)     The Secretary will coordinate with Project Contractors and the  
1066 State of California to seek improved water resource management.

1067                   (4)     The Secretary will coordinate actions of agencies within the  
1068 Department of the Interior that may impact the availability of water for Project purposes.

1069                   (5)     The Contracting Officer shall periodically, but not less than  
1070 annually, hold division level meetings to discuss Project operations, division level water  
1071 management activities, and other issues as appropriate.

1072                   (c)     Without limiting the contractual obligations of the Contracting Officer  
1073 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1074 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1075 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1076 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1077 with applicable laws.

1078                                   **CHARGES FOR DELINQUENT PAYMENTS**

1079                   21.    (a)     The Contractor shall be subject to interest, administrative and penalty  
1080 charges on delinquent installments or payments. When a payment is not received by the due  
1081 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1082 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1083 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1084 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1085 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due

1086 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1087 with a delinquent payment.

1088 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1089 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1090 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1091 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1092 determined as of the due date and remain fixed for the duration of the delinquent period.

1093 (c) When a partial payment on a delinquent account is received, the amount  
1094 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1095 accrued interest, and finally to the overdue payment.

1096 EQUAL EMPLOYMENT OPPORTUNITY

1097 22. During the performance of this Contract, the Contractor agrees as follows:

1098 (a) The Contractor will not discriminate against any employee or applicant for  
1099 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1100 will take affirmative action to ensure that applicants are employed, and that employees are  
1101 treated during employment, without regard to their race, color, religion, sex, disability, or  
1102 national origin. Such action shall include, but not be limited to the following: employment,  
1103 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1104 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1105 The Contractor agrees to post in conspicuous places, available to employees and applicants for  
1106 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1107 nondiscrimination clause.

1108 (b) The Contractor will, in all solicitations or advertisements for employees  
1109 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1110 consideration for employment without regard to race, color, religion, sex, disability, or national  
1111 origin.

1112 (c) The Contractor will send to each labor union or representative of workers  
1113 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1114 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1115 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1116 1965, and shall post copies of the notice in conspicuous places available to employees and  
1117 applicants for employment.

1118 (d) The Contractor will comply with all provisions of Executive Order No.  
1119 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1120 of Labor.

1121 (e) The Contractor will furnish all information and reports required by  
1122 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1123 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1124 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1125 ascertain compliance with such rules, regulations, and orders.

1126 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1127 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1128 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1129 ineligible for further Government contracts in accordance with procedures authorized in  
1130 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1131 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1132 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1133 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1134 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1135 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1136 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1137 will take such action with respect to any subcontract or purchase order as may be directed by the  
1138 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1139 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1140 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1141 Contractor may request the United States to enter into such litigation to protect the interests of  
1142 the United States.

1143 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1144 23. (a) The obligation of the Contractor to pay the United States as provided in  
1145 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1146 obligation may be distributed among the Contractor's water users and notwithstanding the  
1147 default of individual water users in their obligations to the Contractor.

1148 (b) The payment of charges becoming due hereunder is a condition precedent  
1149 to receiving benefits under this Contract. The United States shall not make water available to the  
1150 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1151 in the advance payment of water rates due the United States. The Contractor shall not furnish

1152 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1153 advance payment of water rates levied or established by the Contractor.

1154 (c) With respect to subdivision (b) of this Article of this Contract, the  
1155 Contractor shall have no obligation to require advance payment for water rates which it levies.

1156 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1157 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1158 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1159 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1160 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1161 U.S. Department of the Interior and/or Bureau of Reclamation.

1162 (b) These statutes require that no person in the United States shall, on the  
1163 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1164 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1165 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1166 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1167 including permitting officials of the United States to inspect premises, programs, and documents.

1168 (c) The Contractor makes this agreement in consideration of and for the  
1169 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1170 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1171 Reclamation, including installment payments after such date on account of arrangements for  
1172 Federal financial assistance which were approved before such date. The Contractor recognizes  
1173 and agrees that such Federal assistance will be extended in reliance on the representations and  
1174 agreements made in this Article, and that the United States reserves the right to seek judicial  
1175 enforcement thereof.

1176 PRIVACY ACT COMPLIANCE

1177 25. Omitted.

1178 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1179 26. In addition to all other payments to be made by the Contractor pursuant to this  
1180 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a

1181 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1182 specific items of direct cost incurred by the United States for work requested by the Contractor  
1183 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1184 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1185 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1186 Article of this Contract shall not apply to costs for routine contract administration.

1187 WATER CONSERVATION

1188 27. (a) Prior to the delivery of water provided from or conveyed through  
1189 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1190 shall be implementing an effective water conservation and efficiency program based on the  
1191 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1192 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1193 under Federal law. The water conservation and efficiency program shall contain definite water  
1194 conservation objectives, appropriate economically feasible water conservation measures, and  
1195 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1196 Contract shall be contingent upon the Contractor's continued implementation of such water  
1197 conservation program. In the event the Contractor's water conservation plan or any revised  
1198 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1199 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1200 circumstances which the Contracting Officer determines are beyond the control of the  
1201 Contractor, water deliveries shall be made under this Contract so long as the Contractor

1202 diligently works with the Contracting Officer to obtain such determination at the earliest  
1203 practicable date, and thereafter the Contractor immediately begins implementing its water  
1204 conservation and efficiency program in accordance with the time schedules therein.

1205 (b) Omitted.

1206 (c) The Contractor shall submit to the Contracting Officer a report on the  
1207 status of its implementation of the water conservation plan on the reporting dates specified in the  
1208 then-existing conservation and efficiency criteria established under Federal law.

1209 (d) At five (5) -year intervals, the Contractor shall revise its water  
1210 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1211 water conservation plans established under Federal law and submit such revised water  
1212 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1213 will then determine if the  
1214 water conservation plan meets Reclamation's then-existing conservation and efficiency criteria  
1215 for evaluating water conservation plans established under Federal law.

1216 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1217 shall be described in the Contractor's water conservation plan.

1218 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1219 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1220 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1221 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1222 Area. Any such water shall not be considered Project Water under this Contract. In addition,

1223 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1224 any water user within the Contractor's Service Area acquires or has available under any other  
1225 contract pursuant to Federal Reclamation law.

1226 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1227 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1228 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1229 Operating Non-Federal Entity by separate agreement between the United States and the  
1230 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1231 rights or obligations of the Contractor or the United States hereunder.

1232 (b) The Contracting Officer has previously notified the Contractor in writing  
1233 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1234 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1235 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1236 under the terms and conditions of the separate agreement between the United States and the  
1237 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1238 rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1239 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1240 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1241 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1242 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1243 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the

1244 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1245 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1246 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1247 States the Contractor's share of the Project Rates and Charges, except to the extent the Operating  
1248 Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1249 separate agreement identified in subdivision (a) of this Article of this Contract.

1250 (c) For so long as the O&M of any portion of the Project facilities serving the  
1251 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1252 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1253 Contract representing the cost associated with the activity being performed by the Operating  
1254 Non-Federal Entity or its successor.

1255 (d) In the event the O&M of the Project facilities operated and maintained by  
1256 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1257 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1258 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1259 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1260 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1261 absence of written notification from the Contracting Officer to the contrary, pay the Rates and  
1262 Charges specified in the revised Exhibit "B" directly to the United States in compliance with  
1263 Article 7 of this Contract.

1264

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1265           30.    The expenditure or advance of any money or the performance of any obligation of  
1266 the United States under this Contract shall be contingent upon appropriation or allotment of  
1267 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1268 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1269 not appropriated or allotted.

1270

BOOKS, RECORDS, AND REPORTS

1271           31.    (a)    The Contractor shall establish and maintain accounts and other books and  
1272 records pertaining to administration of the terms and conditions of this Contract, including: the  
1273 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1274 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1275 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1276 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1277 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1278 Contract shall have the right during office hours to examine and make copies of the other party's  
1279 books and records relating to matters covered by this Contract.

1280                   (b)    Notwithstanding the provisions of subdivision (a) of this Article of this  
1281 Contract, no books, records, or other information shall be requested from the Contractor by the  
1282 Contracting Officer unless such books, records, or information are reasonably related to the  
1283 administration or performance of this Contract. Any such request shall allow the Contractor a  
1284 reasonable period of time within which to provide the requested books, records, or information.

1285                   (c)    At such time as the Contractor provides information to the Contracting  
1286 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1287 shall be provided to the Operating Non-Federal Entity.

1288

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1289           32.    (a)    The provisions of this Contract shall apply to and bind the successors and  
1290 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1291 therein shall be valid until approved in writing by the Contracting Officer.



1312 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1313 final court decision.

1314 RESOLUTION OF DISPUTES

1315 34. Should any dispute arise concerning any provisions of this Contract, or the  
1316 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1317 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1318 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1319 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1320 not be required where a delay in commencing an action would prejudice the interests of the party  
1321 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1322 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1323 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1324 Contractor or the United States may have.

1325 OFFICIALS NOT TO BENEFIT

1326 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1327 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1328 manner as other water users or landowners.

1329 CHANGES IN CONTRACTOR'S SERVICE AREA

1330 36. (a) While this Contract is in effect, no change may be made in the  
1331 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1332 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1333 (b) Within thirty (30) days of receipt of a request for such a change, the  
1334 Contracting Officer will notify the Contractor of any additional information required by the

1335 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1336 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1337 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1338 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1339 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1340 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1341 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1342 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
1343 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1344 with Article 26 of this Contract.

1345 FEDERAL LAWS

1346 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1347 the validity or application in connection with the performance of the terms and conditions of this  
1348 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1349 the terms and conditions of this Contract unless and until relief from application of such Federal  
1350 law or regulation to the implementing provision of the Contract is granted by a court of  
1351 competent jurisdiction.

1352 EMERGENCY RESERVE FUND

1353 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1354 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1355 Friant Division Facilities is and will continue to be administered under Contract No.

1356 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1357 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1358 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1359 MEDIUM FOR TRANSMITTING PAYMENT

1360 39. (a) All payments from the Contractor to the United States under this contract  
1361 shall be by the medium requested by the United States on or before the date payment is due. The  
1362 required method of payment may include checks, wire transfers, or other types of payment  
1363 specified by the United States.

1364 (b) Upon execution of the contract, the Contractor shall furnish the  
1365 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1366 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1367 out of the Contractor's relationship with the United States.

1368 NOTICES

1369 40. Any notice, demand, or request authorized or required by this Contract shall be  
1370 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1371 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1372 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1373 to the Board of Directors of Lewis Creek Water District, P.O. Box 911, Visalia, California  
1374 93279. The designation of the addressee or the address may be changed by notice given in the  
1375 same manner as provided in this Article of this Contract for other notices.

1376 CONFIRMATION OF CONTRACT

1377 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1378 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1379 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1380 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1381 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1382 valid, and binding on the Contractor.

1383 CONTRACT DRAFTING CONSIDERATIONS

1384 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1385 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,

1386 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1387 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the  
1388 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and  
1389 no one party shall be considered to have drafted the stated Articles.

1390           **IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day**  
1391   **and year first above written.**

**BEFORE THE BOARD OF DIRECTORS  
OF THE  
LEWIS CREEK WATER DISTRICT**

IN THE MATTER OF:

RESOLUTION NO: 2010-#4

**APPROVING AND AUTHORIZING THE EXECUTION OF A  
CONTRACT BETWEEN THE UNITED STATES THE LEWIS CREEK WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT; AND  
AUTHORIZING COMMENCEMENT OF VALIDATION ACTION**

WHEREAS, the United States of America (“United States”) has constructed and is operating the Central Valley Project (“Project”) in California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries (“Project Water”); and

WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of Project Water to the Lewis Creek Water District (“District”); and

WHEREAS, the United States and the District have, continuously, since February 19, 1965, been parties to a contract, as amended and as renewed periodically, providing for water service from the Friant Division Facilities to the District (the “Existing Contract”); and

WHEREAS, Federal law, and the Existing Contract in accordance with Article 2(d) thereof, provide for conversion to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939 which conversion, upon District’s payment of Contractor’s share of the remaining amount of Project construction costs, would grant the District a permanent right to a stated share or quantity of Project Water, relieve its landowners of the acreage limitation and full cost pricing provisions of Reclamation Law; and relieve the District of tiered pricing provisions;

WHEREAS, as a result of litigation entitled “Natural Resources Defense Council, et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain Friant Division contractors entered into a Stipulation of Settlement dated September 13, 2006 (the “Settlement”), which Settlement was subsequently confirmed and implemented through Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), known as the San Joaquin River Restoration Settlement Act and hereinafter referred to as “SJRRSA”; and

WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no later than December 31, 2010, under mutually agreeable terms and conditions; and

WHEREAS, the District and United States have concluded negotiations on all substantive terms and conditions of a repayment contract entitled "Contract between the United States and District for Project Water Service and Facilities Repayment," a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference ("Repayment Contract"); and

WHEREAS, consistent with the provisions of the SJRRSA and other laws, the Repayment Contract includes provisions improving water management, including provisions expediting water transfers by the District;

WHEREAS, upon completing accelerated repayment of its allocated share of capital obligations as required therein, the Repayment Contract provides that: (i) the District is vested with the permanent right to a stated share or quantity of water from the Project for beneficial use by the District; (ii) its landholders will be relieved of the acreage limitation and full cost pricing provisions of Reclamation Law; and (iii) the District will be relieved of tiered pricing provisions; and

WHEREAS, the District intends to finance its capital cost repayment obligations under the Repayment Contract through issuance of bonds or other form of indebtedness; and

WHEREAS, the Repayment Contract requires that the District provide the United States with a final decree of a court of competent jurisdiction of the State of California confirming the validity of the Repayment Contract; and

WHEREAS, the Board of Directors has reviewed the Repayment Contract and finds that conversion from the Existing Contract to the Repayment Contract is in the best interests of the District and its landowners, and that the Repayment Contract should be executed in substantially the form attached as Exhibit A hereto, which execution shall occur upon the completion of proceedings necessary to validate the Repayment Contract and upon obtaining the financing sufficient for retiring its repayment obligations under terms satisfactory to the Board of Directors; and

WHEREAS, federal law requires that the Repayment Obligation (as defined in the Repayment Contract) be determined according to the Treasury Rate (as defined in the Repayment Contract) on October 1, 2010, and that Exhibit Nos. C1, C2 and D of the Repayment Contract, which set forth the Repayment Obligation of the District, are based upon the current Treasury Rate and that adjustments to the Treasury Rate could occur before October 1, 2010, and such adjustment will require corresponding adjustment of the Repayment Obligation currently described in Exhibit Nos. C1, C2 and D prior to execution of the Repayment Contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors:

1. Determines that the foregoing recitals and findings are true and correct, and incorporates them herein by this reference; and

2. Approves and authorizes execution of the Repayment Contract by the President and Secretary in substantially the form attached hereto as Exhibit A, which execution shall be subject to and occur upon: (i) the successful completion of proceedings necessary to validate the Repayment Contract; (ii) the final determination of the Treasury Rate on October 1, 2010 and the resulting final determination of the Repayment Obligation set forth in Exhibit Nos. C1, C2 and D of the Repayment Contract; and (iii) the District obtaining financing of its repayment obligations under terms satisfactory to the Board of Directors; and
3. Authorizes and directs the District's legal counsel to initiate and prosecute a validation proceeding pursuant to Code of Civil Procedure section 860, et seq., as necessary to confirm the validity of the Repayment Contract, and to do all things necessary and appropriate to prosecute said action; and
4. Authorizes and directs the District's Secretary to provide certified copies of the foregoing resolution to the Bureau of Reclamation; and
5. Authorizes and directs the District's officers, staff and consultants to take all additional actions they deem necessary or appropriate to facilitate the conversion to the Repayment Contract and obtain appropriate financing of the Repayment Obligation; and

BE IT FURTHER RESOLVED that until the Repayment Contract in substantially the form as Exhibit A is executed by the District and the United States, the Existing Contract shall continue in full force and effect in accordance with its terms.

All of the foregoing, being on the motion of Director Juskovich, and seconded by Director Bill, was authorized by the following vote:

AYES: 4

NOES: 0

ABSTAINING: 0

ABSENT: 1

I HEREBY CERTIFY that the foregoing resolution is the resolution of said District as duly passed and adopted by said Board of Directors on the 16th day of June, 2010.

WITNESS my hand and seal of the Board of Directors this 16th day of June, 2010.

Ed Murray  
Secretary of the Board of Directors